



RANCHO SONADO PROJECT

CONSTRUCTION SERVICES AGREEMENT

Between

ORANGE COUNTY SUPERINTENDENT OF SCHOOLS

and

[_____]

Dated as of _____, 2025

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RANCHO SONADO PROJECT
CONSTRUCTION SERVICES AGREEMENT

This Construction Services Agreement is made as of _____, 2025 by and between the Orange County Superintendent of Schools, a California public agency organized and existing under the laws of the State of California (hereinafter called the "Superintendent"), and _____, a California corporation operating under the laws of the State of _____ ("Contractor").

General intent of agreement:

WHEREAS, the Superintendent entered into an agreement with _____ (the "Architect") to provide architectural services for the Superintendent for the purpose of developing Construction Documents for the construction of improvements at the Rancho Sonado property located at 8755 Santiago Canyon Road, Silverado, California (the "Project").

1. GENERAL INTENT

- 1.1 The Superintendent has reviewed the different methodologies available to deliver a public works project and has carefully considered the options of competitive bid to a general contractor who would be responsible for the entire project, a construction management managed multi-prime trade contract project, an at-risk construction management contract, turn-key delivery by another public entity or delivered by another public entity through a joint use project, but have through Superintendent action and independent staff review determined that there are benefits and detriments to each delivery method.
- 1.2 The Superintendent has also reviewed the lease-leaseback methodology under California Education Code sections 1048 and 17400 *et seq.*, which permits the Orange County Superintendent of Schools to lease to any person, firm, or corporation any real property owned by the if the instrument by which such property is leased requires the lessee to construct on the leased premises, or provide for the construction thereon, of a building for the use of the Superintendent, during the term of the lease, and provides that title to that building shall vest in the Superintendent prior to or at the expiration of the lease.
- 1.3 As part of the Superintendent's consideration of the possible methods of delivery, the Superintendent has also reviewed available information from staff and considered the benefits and detriments of the lease-leaseback delivery method.
- 1.4 Further, the Superintendent understands that unique to the lease-leaseback delivery method, the lease-leaseback Contractor will not only be undertaking the traditional due diligence of investigating existing Project related information, documents and the Project site, but now included as part of the Contractor's "Due Diligence" (as defined herein) as part of this lease-leaseback delivery method, the Contractor will be performing a review of the Construction Documents to visualize conflicts that may have not been located by the Architect as part of the Architect's constructability review when the Construction Documents were being prepared.
- 1.5 The Superintendent in its consideration of the substantial evidence that is available to staff and through the Superintendent's own research has determined that this ability to work between the Contractor and the Architect to resolve a greater percentage of construction claims that would ordinarily arise through any of the other delivery methods addressed in Article 1.1 above also provides the ability of the Contractor to determine the likely level of errors and omissions, and provides a Guaranteed Maximum Price for the Project based on the Contractor's Due Diligence. The unique ability to determine with certainty the budget numbers for the Project provides the Superintendent the ability to not only ensure that the Superintendent is best serving the community and its school children, but also provides the ability to focus resources towards future and

simultaneous projects that could not be undertaken during any of the other delivery methods since a sizable contingency needs to be set aside for potential claims, litigation, arbitration, mediation, and delays that could jeopardize the ability to plan for occupancy of the building or the possibility of having to spend significant resources to procure alternative facilities.

- 1.6 As part of this lease-leaseback Construction Services Agreement, a site lease with Contractor (the "Site Lease"), for the Project has been entered into and attached as Exhibits to the Site Lease is a description of the site (the "Site") in order for Contractor to construct improvements to this existing Site under the possessory interest of a lease with a greater degree of control over the overall Project, including ability to coordinate Site related items such as utilities, ability to insure both the Project and the Site against a broader range of risks, and greater primary control and oversight over Subcontractors and suppliers for the Project as the lessee of the Site.
- 1.7 In addition, the Contractor subleases the constructed portions of the Site and the Project back to the Superintendent pursuant to a Sublease Agreement (the "Sublease") under which the Superintendent will be required to make Sublease Payments as described therein; and
- 1.8 It is agreed that upon the expiration of the Site Lease and Sublease, title to the Project shall vest in the Superintendent; and
- 1.9 Contractor represents that Contractor is uniquely experienced in construction of public schools and community colleges including, but not limited to, the specific requirements and regulations of the Field Act as administered by the Division of State Architect, working with the Division of State Architect, Office of Public School Construction, California Department of Education and work with the various applicable other State and local agencies that have jurisdiction over the Project, is duly licensed as a contractor in the State of California, and is prepared to analyze, synthesize and efficiently perform construction work for the Superintendent as more fully set forth in this Agreement
- 1.10 Contractor has thoroughly performed Due Diligence as defined in Articles 4 and 5 to establish a Guaranteed Maximum Price for the Project (which may include an Errors and Omissions Contingency and a Construction Contingency for Contractor's own errors and omissions) that will not be exceeded. Contractor has investigated the site conditions and reviewed the Construction Documents to establish that there are no known problems with respect to the site conditions or the Construction Documents and that Contractor can and will construct the Project for the Guaranteed Maximum Price as set forth in Article 3 and defined in Article 5 of this Construction Services Agreement, and Contractor will not seek any additional compensation whatsoever, including, without limitation, any requests based upon known site conditions, extensions on the Lease beyond the Lease period or any requests, except for such additional compensation provided for herein based upon unforeseen conditions and/or errors or omissions contained within the plans and specification or Construction Documents.
- 1.11 Since the Contractor has entered into a negotiated Lease and is performing this Construction Services Agreement as the Lessee of the Premises, Contractor understands and agrees that:
 - 1.11.1 Public Contract Code section 4100 *et seq.* addressing subcontractor listing shall not apply except to the extent applicable under Education Code section 17406(a)(4). However, the Superintendent is requiring an open book accounting and the public selection of Subcontractors pursuant to Article 6.3 of this Agreement.
 - 1.11.2 Public Contract Code section 20111 addressing competitive bidding does not apply to the Project pursuant to the specific language of Education Code section 17406 which provides for a competitive procurement process through request for sealed proposals from qualified proposers.

- 1.11.3 Public Contract Code section 3400 addressing proprietary specifications does not apply since the Contractor has entered into a negotiated Lease pursuant to which is obligated to build the Project. The Contractor agrees and acknowledges that it has had great opportunity throughout the Due Diligence process and negotiation of the Lease and related agreements to propose any changes or substitutions, and warranties that it shall propose no further changes or substitutions pursuant to Public Contract Code section 3400. Substitutions and Value Engineering are allowed to address cost savings and to more efficiently build the Project at Articles 5.3 and 16.
- 1.11.4 The requirements in Public Contract Code section 22300 shall not apply.
- 1.12 Prequalification of Contractor and MEP Subcontractors. In accordance with California Public Contract Code section 20111.6, the Contractor is required to submit to the Superintendent a completed set of prequalification documents on forms provided by the Superintendent and be deemed prequalified by the Superintendent prior to entering into the Contract for the Project. In addition, all mechanical, electrical or plumbing (“MEP”) Subcontractors of any tier (contractors that hold C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43 or C-46 licenses), must also be prequalified. It is the responsibility of the Contractor to ensure that all MEP Subcontractors holding any of the licenses listed above are properly prequalified. This prequalification requirement for MEP Subcontractors applies even if the subcontractor will perform, or is designated to perform, work that does not require one of the licenses listed above, but the subcontractor holds one of the licenses listed above.

2. TITLE 24 RESPONSIBILITIES – GENERAL INTENT OF THE CSA

Contractor accepts the contractual relationship established between it and Superintendent by this Construction Services Agreement, and Contractor covenants with Superintendent to furnish reasonable skill and judgment in constructing the Project as set forth in the Construction Documents, as defined in Article 4 for the Project which are described and/or set forth herein as Exhibit “A.” Contractor agrees to furnish efficient business administration, coordination review of the Construction Documents, coordination of the work of the Subcontractors and vendors and superintendence to furnish at all times an adequate supply of professionals, workers, and materials and to perform the work appropriately, expeditiously, economically, and consistent with the Construction Services Agreement and Construction Documents as defined in Article 14, below.

- 2.1 **Title 24 Responsibilities.** The Contractor shall continually supervise and direct the Work using the Contractor’s best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures; and shall coordinate all portions of the Work in conformance with the Contract Documents. Specific duties of the Contractor shall include those set out in Section 43 of Title 21 of the California Code of Regulations and Section 4-343 of Title 24 of the California Code of Regulations. These duties include, but are not limited to the following:
- 2.1.1 *Responsibilities.* It is the duty of the Contractor to complete the Work covered by his or her Contract in accordance with the approved Construction Documents. The Contractor in no way is relieved of any responsibility by the activities of the Architect, Engineer, Inspector or DSA in the performance of their duties.
- 2.1.2 *Performance of the Work.* The Contractor shall carefully study the approved Construction Documents and shall plan its schedule of operations well ahead of time. If at any time it is discovered that work is being done which is not in accordance with the approved Construction Documents, the Contractor shall correct the Work immediately.
- 2.1.3 *Inconsistencies.* All inconsistencies or timing or sequences which appear to be in error in the Construction Documents shall promptly be called to the attention of the Architect or, Engineer, for interpretation or correction. Local conditions which may affect the

structure shall be brought to the Architect's attention at once. In no case, shall the instruction of the Architect be construed to cause work to be done which is not in conformity with the approved plans, specifications, change orders, construction change documents, and as required by law. (See Title 24 Section 4-343)

- 2.1.4 *Verified Reports.* The Contractor shall make and submit to the office from time to time, verified reports as required in Title 24 Section 4-366. As part of the Close-Out of the Project (see Article 13.16), Contractor shall be required to execute a Form 6-C as required under Title 24 Sections 4-343.
- 2.1.5 *Reporting Requirements.* Contractor shall fully comply with any and all reporting requirements of Education Code sections 17315, *et seq.*, in the manner prescribed by Title 24, as applicable.
- 2.1.6 *Contractor Responsibility.* The Contractor shall be responsible to the Superintendent for acts and omissions of the Contractor's employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the Work under direct or indirect contract with the Contractor or any of its Subcontractors.
- 2.1.7 *All Work is performed Under the Direction of Inspector.* Pursuant to Title 24 requirements, the Contractor shall not carry on Work except with the knowledge of the Inspector. (See Title 24 generally)
- 2.1.8 *Contractor to Establish Timing and Protocol with Inspector.* Contractor shall establish a protocol for requesting inspection with Inspector so as to not delay the Work and provide adequate time for the Inspector to perform inspection. If such a protocol is not established ahead of time, Inspector may utilize the time criteria set by Title 24 of 48 hours in advance of submitting form DSA 156 for each new area. DSA requirements under PR 13-01 specifically gives the Special Inspector fourteen (14) days to post to the DSA website. Contractor is responsible for delays and for failure to plan.
- 2.1.9 *Conformance with Approved Submittals.* This conformance includes performing all Work only in conformance with approved Submittals, Shop Drawings, and Samples or the Inspector may be required to issue a DSA Form 154 Notice of Deviation from approved DSA Contract Documents.
- 2.1.10 *Incremental Assemblies.* For some Projects, there may be a need to incrementally install certain assemblies. It is up to Contractor to identify areas and assemblies that may be constructed incrementally. Contractor must identify and establish incremental areas of construction and establish protocols with Inspector for DSA 152 approvals so they may be presented to DSA. See PR-13 item 2.1.10 for further discussion.
- 2.1.11 *Coordination with Outside Contractors.* If any of the Work for the Project is known to include Work performed by contractors retained directly by the Superintendent, Contractor shall be responsible for the coordination and sequencing of the Work of those other contractors so as to avoid any impact on the Project Schedule.

3. **CONTRACT INFORMATION**

- 3.1 Superintendent: ORANGE COUNTY SUPERINTENDENT OF SCHOOLS
200 Kalmus Drive
Costa Mesa, CA 92626
- 3.2 Notices: Patricia McCaughey
Email: PMcCaughey@ocde.us

3.3 Contractor: _____ [Name] _____
_____[Address] _____
_____[City] _____
_____[Telephone] _____

3.4 Notices: _____
_____[e-mail] _____

The following are established through Contractor's review of the Program, Contract Documents and through Contractor's Due Diligence prior to entering into this Agreement:

3.5 Contract Time is _____ Days.

3.6 Liquidated Damages for overstaying Lease (Art. 18) is \$ _____ per calendar day.

3.7 Guaranteed Maximum Price (Art. 5) is \$ _____.

3.7.1 Construction Contingency (within GMP) is \$ _____.

3.7.2 Errors and Omissions Contingency (within GMP) is \$ _____.

3.8 The only exception to the GMP is Unforeseen Underground Conditions, and Superintendent Contingency for Owner requested extras as follows:

3.8.1 Superintendent's _____ Contingency (Art. 8) is \$ _____. Superintendent Contingency is carried outside of the GMP.

3.8.2 Unforeseen Allowance is \$ _____. Unforeseen Allowance is carried outside of the GMP.

3.9 The Contractor's fee for this Project is _____ percent (____%) and is included in the GMP.

4. **DEFINITIONS**

4.1 Action of the Governing Board is a vote of a majority of the Superintendent's Governing Board of Education.

4.2 Allowances are separate from the Unforeseen Allowance and mean budgets established for specific scopes of the Work which cannot be fully defined in the Construction Documents at the time that the GMP is established. Allowances may only be drawn upon pursuant to a Change Order issued pursuant to Article 17. In the event that an Allowance is included, the Contractor shall provide all services, work, labor and materials reasonably implicit in the description of the Allowance for the amount stated for the Allowance, all in accordance with the Construction Documents. Contractor acknowledges and agrees that it has had ample time and consideration to fully assess any Allowance(s) and to negotiate the description and amount of the Allowance(s), such that Contractor fully accepts and shall bear the entire risk and responsibility of providing all services, work, labor and materials required for the Allowance(s) under this Agreement. Expenditures from the GMP will either arise from Construction Contingency or Errors and Omissions Contingency and shall be submitted pursuant to Article 17 addressing Change Orders. The amount of the Change Order shall reflect the difference between actual costs approved by the Superintendent and the allowance amounts established in the GMP.

- 4.3 As-Builts are a set of Construction Documents maintained by the Contractor clearly showing all changes, revisions, substitutions, field changes, final locations, and other significant features of the Project. The As-Builts shall be maintained continuously throughout the Work for the Project and is both a prerequisite to the issuance of Pay Application and a requirement for Contract Close-Out. See Article 13.14.
- 4.4 Architect means the architect, engineer, or other design professional engaged by the Superintendent to design and perform general observation of the work of construction and interpret the drawings and specifications for the Project.
- 4.5 Beneficial Occupancy is the point in time when a building or buildings are fit for occupancy is fit for occupancy and its intended use. Basic requirements are the building is safe, at or near Substantial Completion, and all life safety is operational. The fact that a building is occupied does not mean that the building is ready for Beneficial Occupancy if there are elements that are unsafe or if life safety items are not operational. Taking occupancy on a structure that is under a fire watch is not considered Beneficial Occupancy. Beneficial Occupancy is not be used by the Contractor as a basis to request Retention Payment unless the entire Project is Substantially Complete in accordance with Article 4.45.
- 4.6 Claims. A Claim is a request for payment, supported by back-up documentation which includes, invoices time sheets, or other documents substantiating legitimacy or entitlement that is submitted during the Project or immediately following the Project made prior to the Application for Retention Payment and prior to Final Completion of the Project. A "Claim" means a separate demand by the Contractor for (1) time extension, (2) payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (3) and amount the payment of which is disputed by the Superintendent. See Article 20.
- 4.7 Close-Out means the process for Final Completion of the Project, but also includes the requirements for the DSA Certification that the Project is Complete (See DSA Certification Guide). See Article 13.16.
- 4.8 Commencement Date shall mean the Project commencement date found in the Notice to Proceed for the Project in accordance with Article 4.28 of this Construction Services Agreement.
- 4.9 Complete/ Final Completion means that all Work in the Contract Documents is finished, the requirements of the Contract Documents have been met, successful testing, startup and satisfactory operation of the Project as a total unit has been accomplished in substantial conformance with the Contract Documents, the Project is completed, all Work has ceased on the Project and the Project has been accepted by the Superintendent's Board. This may also be referred to as Final Completion. In most cases, the recording of a Notice of Completion shall represent Completion of the Project. Beneficial Occupancy or Substantial Completion does not mean the Work is Complete.
- 4.10 Completion Date is the date when all Work for the Project shall be Substantially Complete and is the date assigned at the end of the Contract Time for the Project.
- 4.11 Construction Change Document (CCD). A Construction Change Document is a DSA term that is utilized to address changes to the DSA approved Construction Documents. There are two types of Construction Change Documents. (1) DSA approved CCD Category A (DSA Form 140) for work affecting Structural, Access or Fire-Life Safety of the Project which will require a DSA approval; and, (2) CCD Category B (DSA Form 140) for work NOT affecting Structural Safety, Access Compliance or Fire and Life Safety that will not require a DSA approval (except to confirm that no Approval is required). See Article 17.4.
- 4.12 Construction Services Agreement (CSA) means this Construction Services Agreement, together with any duly authorized and executed amendments hereto.

- 4.13 Construction or Construction Services means all labor and services necessary for the construction of the Project, and all materials, equipment, tools, supplies and incidentals incorporated or to be incorporated in such construction as fully described in the Contract Documents.
- 4.14 Construction Costs means any and all costs incurred by the Contractor with respect to the construction and equipping, as the case may be, of the improvements performed, whether paid or incurred prior to or after the date hereof, including, without limitation, costs for Site preparation, the removal or demolition of existing structures, the construction of the Project and related facilities and improvements, and all other work in connection therewith, security of the Site and Project, Contractors' overhead and supervision at the Project Site, all costs and expenses including any taxes or insurance premiums paid by the Contractor with respect to the Property, and administrative and other expenses necessary or incident to the Project, excluding Contractors' and Developers' home office overhead and profit. The term "Construction Costs" includes all Contractor's costs associated with preparing or generating additional copies of any Construction Documents, as defined below, related to or required for the Project, including preparation or generation of additional Plans and/or Specifications for Contractor's Subcontractors. In no event shall Construction Costs exceed the Guaranteed Maximum Price.
- 4.15 Construction Documents comprise the Plans and Specifications approved by DSA under Application Number _____, File Number _____, Allowances stipulated in the Contract Documents, and all Addenda, if any, issued prior to the entry into this Agreement. The Construction Documents shall include all Modifications generated after the Effective Date in accordance with the Contract Documents, including, without limitation, a written amendment to the Contract signed by the Contractor and duly executed and approved by the Superintendent, a Change Order, a Construction Change Document, or a written order for a minor change in the Work issued by the Architect.
- 4.16 Contract Documents means those documents which form the entire Contract by and between Superintendent and Contractor. The Contract Documents consist of the Site Lease, Sublease, General, Supplementary and other Conditions, this Construction Services Agreement, including all exhibits and attachments hereto, and the Construction Documents. The Contract Documents collectively form the Contract. The Contract represents the entire and integrated Agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall be binding solely upon the Superintendent and Contractor, do not create a contractual relationship of any kind between the Architect and Contractor, between the Superintendent and any Subcontractor or Sub-subcontractor, or between any persons or entities other than the Superintendent and the Contractor, and are not intended to and do not create any third party beneficiary. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.
- 4.17 Contract Time is the time period specified in the Contract Documents in which the Project shall be completed. This is sometimes referred to a Contract Duration, or "time in which the Contractor has to Complete the Project". See Article 9.
- 4.18 Day means a calendar day unless specifically designated as a business day.
- 4.19 Drawings or Plans are graphic and pictorial portions of the Contract Documents prepared for the Project and approved changes thereto, wherever located and whenever issued, showing the design, location, and scope of the Work, generally including plans, elevations, sections, details, schedules, and diagrams as drawn or approved by the Architect. Sometimes Drawings will also be included in Addenda, Change Orders, and Specifications.
- 4.20 Due Diligence is the review and analysis of as-built documents, title documents, any prior design documents for the Project or Site, geotechnical reports, surveys, site investigations and other documents and information provided by the Superintendent, and synthesizing of information

utilized to determine the components of the GMP. Requirements for Due Diligence are further addressed at Article 5.

- 4.21 DSA is the Division of State Architect. DSA is the agency that provides design and construction oversight for K-12 Schools, Community Colleges, and State Funded Charter School Projects. DSA is the responsible agency for this Project and Contractor has submitted a proposal for the Project since Contractor is familiar with Contractor's responsibilities under the DSA requirements more thoroughly set forth at Title 24 of the California Code of Regulations. Contractor agrees to abide by the jurisdiction of DSA and shall construct the Project to conform with the approved plans, specifications, Addenda, and Change Orders (inclusive of approved CCD's and ICD's issued by the Superintendent pending CCD approval). The DSA website is at <http://www.dgs.ca.gov/dsa>.
- 4.22 Effective Date is the latter of the date upon which the Superintendent Board approves the Site Lease and the Sublease and Contractor has executed the Site Lease and Sublease
- 4.23 Float the total number of days an activity may be extended or delayed without delaying the Completion Date shown in the schedule. Float will fall into three categories: (1) Rain Days; (2) Governmental Delays; and, (3) Project Float. See Article 9.2.
- 4.24 Immediate Change Directive (ICD) is a written order prepared by the Architect and signed by the Superintendent and the Architect, directing a change in the Work where the Work must proceed immediately and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. See Article 17.4.1.2
- 4.25 Inspector of Record (IOR) or Project Inspector (PI) is the individual retained by the Superintendent in accordance with Title 24 of the California Code of Regulations who will be assigned to the Project
- 4.26 Guaranteed Maximum Price or GMP means the Guaranteed Maximum Price established pursuant to Article 5 to be paid to Contractor for Contractor's construction of the Project hereunder, subject to any adjustments for Extra Work/Modifications as provided in Article 17.
- 4.27 Notice of Non-Compliance (DSA Form 154) is a document issued by the Inspector if there is a deviation from the DSA approved Plans, Specifications, and Change Orders. See Article 17.2.
- 4.28 Notice to Proceed. After execution of this Construction Services Agreement and the Site Lease(s) and Sublease(s) between the parties, the Superintendent shall issue a notice to the Contractor to proceed with the Project ("Notice to Proceed"), which Notice to Proceed shall include the date upon which commencement for the Project shall commence.
- 4.29 Plans are that portion of the Construction Documents consisting of the drawings and other pictorial or other graphic expression of requirements for the work of improvement to be completed by Contractor, including, without limitation, services, work, material, equipment, construction systems, instructions, quality assurance standards, workmanship, and performance of related services.
- 4.30 Project means the improvements to be constructed and installed by the Contractor, as more particularly described and/or referenced in Exhibit "A" attached hereto.
- 4.31 Provide shall include "provide complete in place," that is "furnish and install complete."
- 4.32 Punch List is a list of minor repair items, prepared after the issuance of a Certificate of Substantial Completion, by the Inspector and Architect of Work required in order to complete the Contract Documents and ensure compliance with the DSA Approved Plans so the Project may be Closed Out. Issuance of the Retention Payment is dependent upon the proper completion of the Punch List. See Article 13.16 and Article 29.
- 4.33 Request for Information (RFI) is a written request prepared by the Contractor requesting the Architect to provide additional information necessary to clarify or amplify an item which the

Contractor believes is not clearly shown or called for in the drawings or specifications, or to address problems which have arisen under field conditions.

- 4.34 Schedule is the Contractor's view of the practical way in which the Work will be accomplished. In this Agreement there is a requirement for a Baseline Schedule and regular Schedule Updates that show all Work to be completed during the Contract Time and shall include all items listed under Article 9.3.
- 4.35 Schedule of Values is a detailed breakdown of the Contract Price for each Project, building, Phase of Work or Site as determined by the Superintendent. This Schedule of Values shall adequately detail the price for the Work so that the status of the construction of any improvements can be meaningfully reviewed by the Inspector, Architect of Record, Engineer of Record, and Superintendent. (See Article 13.12)
- 4.36 Separate Contracts are Contracts that the Superintendent may have with other Contractors, vendors, suppliers, or entities to perform Work on the Project. This may include, but is not limited to Multi-Prime Trade Contractors, furniture installers, testing agencies, clean-up contractors, or network or low voltage contractors. Contractor shall plan for certain other contractors that may also be working on the Project site and address these other contractors in Contractor's Schedule. See Article 32.
- 4.37 Site refers to the grounds of the Project or in some cases may refer to multiple sites as defined in the Contract Documents and such adjacent lands as may be directly affected by the performance of the Work.
- 4.38 Site Lease and/or Lease means the Site Lease(s) of even date herewith, by and between the Superintendent and the Contractor together with any duly authorized and executed amendment thereto under which the Superintendent leases the Site to the Contractor.
- 4.39 Specifications are that portion of the Construction Documents consisting of the written requirements for the work of improvement to be completed by Contractor, including, without limitation, services, work, material, equipment, construction systems, instructions, quality assurance standards, workmanship, and performance of related services.
- 4.40 Standards, Rules, and Regulations referred to are recognized printed standards and shall be considered as one and a part of these specifications within limits specified. Federal, state and local regulations are incorporated into the Contract Documents by reference.
- 4.41 Stop Work Order, or an Order to Comply is issued when either (1) the Work proceeds without DSA approval; (2) the Work proceeds without a DSA Project Inspector, or (3) where DSA determines that the Work is not being performed in accordance with applicable rules and regulations, and would compromise the structural integrity of the Project or would endanger lives. If a Stop Work Order is issued, the Work in the affected area shall cease until DSA withdraws the Stop Work Order. Pursuant to Education Code section 17307.5(b) and Education Code section 81133.5, the Superintendent shall not be held liable in any action filed against the Superintendent for any delays caused by compliance with the Stop Work Order.
- 4.42 Subcontractor means any person or entity, including trade contractors, who have a contract with Contractor to perform any work or supply materials for the Project.
- 4.43 Sublease(s) means the Sublease(s) of even date herewith by and between the Superintendent and Contractor together with any duly authorized and executed amendment hereto under which the Superintendent subleases the Site from the Contractor.
- 4.44 Sublease Payment means any payment required to be made by the Superintendent pursuant to Section 7 of the Sublease.

- 4.45 Substantial Completion is not reached unless and until each of the following five (5) conditions have been fully met: (1) all contractually required items have been installed with the exception of only minor and incomplete Punch List items; (2) All fire/life safety systems have been installed, and are working and signed off on the DSA Form 152 Inspection Card; (3) all building systems including mechanical, electrical and plumbing are all functioning; (4) all other items DSA Form 152 Inspection Card for the Project have been approved and signed off; and (5) the Project is fit for occupancy and its intended use, as certified by the Architect pursuant to the Certificate of Substantial Completion set forth in the Division 1 Forms attached hereto.
- 4.46 Substitution is a change in product, material, equipment, or method of construction from those required by the Construction Documents proposed by the Contractor. Specific requirements for substitutions are set forth at Article 16.
- 4.47 Unforeseen Allowance means the budget established for hazardous substances and underground conditions that differ from representations in the Contract Documents or Due Diligence Documents and meet the requirements under Article 13.15.5 and 18.4. The Unforeseen Allowance may also include other costs as allocated in the Superintendent's sole and absolute discretion related to the Project. The Superintendent, in its sole and absolute discretion, may use the Superintendent Contingency to fund any costs allowed under the Unforeseen Allowance. Any funds remaining in the Unforeseen Allowance at the completion of the Project shall remain unspent and allocated to the Superintendent as the Superintendent sees fit to use.
- 4.48 Work shall include all labor, materials, services and equipment necessary for the Contractor to fulfill all of its obligations pursuant to the Contract Documents. It shall include extension of Contractor's obligations to Subcontractor to perform Subcontractor Due Diligence including, but not limited to, visiting the Site of the proposed Work (a continuing obligation after the commencement of the Work), fully acquainting and familiarizing itself with the conditions as they exist and the character of the operations to be carried out under the Contract Documents, and make such investigation as it may see fit so that it shall fully understand the facilities, physical conditions, and restrictions attending the Work under the Contract Documents. Each such Contractor or Subcontractor shall also thoroughly examine and become familiar with the Drawings, Specifications, and associated Contract Documents.
- 4.49 Workers include laborers, workers, and mechanics.

5. ESTABLISHMENT OF GUARANTEED MAXIMUM PRICE "GMP"

- 5.1 Guaranteed Maximum Price (GMP) is the amount agreed upon between the Superintendent and Contractor that shall not be exceeded for the Construction of the Project within the Contract Time based on Contractor's thorough review of the Contract Documents, Due Diligence in investigation of all aspects of the Project. The GMP includes the costs for the Sublease Payments being paid by the Superintendent as Progress Payments and Retention Payment during construction in accordance with the terms of this Construction Services Agreement. Any references to Progress Payments shall also mean Sublease Payments. A Construction Contingency (Article 5.2.1) and an Errors and Omissions Contingency (Article 5.2.2) is contained within the GMP. Costs that are outside of the GMP shall be as follows:
- 5.1.1 Owner requested additional work (See Article 8) to be paid under the Superintendent Contingency.
- 5.1.2 Unforeseen underground soil conditions or unforeseen hazardous materials that meet the requirements of Article 13.15.5 and 18.4 to be paid under the Unforeseen Allowance.
- 5.2 GMP. As a result of the Due Diligence of Contractor, the GMP for the Project is set forth under Article 3. The GMP is based upon all Due Diligence performed, the approved Construction

Documents, and all other Contract Documents existing and reviewed by the Contractor at the time this Construction Services Agreement is entered into as more fully described and referenced in the Scope of Work set forth in Exhibit "A." Contractor's detailed line item costing of the Project, or Master Budget, totaling the GMP is attached hereto as Exhibit "B." Furthermore, the Superintendent and Contractor represent and warrant that the GMP is separate and distinct from the Sublease Payments to be paid by the Superintendent under the Sublease.

The GMP is an "all inclusive" price for the construction of the Project that is calculated after Due Diligence and shall not be exceeded except as set forth in this Agreement. Contractor has taken on all contingencies and calculated those contingencies out in the form of the Construction Contingency. Contractor specifically agrees that once the Construction Contingency is fully exhausted, that Contractor can and shall Complete the Project pursuant to the terms of this Agreement within the Contract Time. No disputes concerning compensation, extras, or application of Contingencies shall be utilized as grounds to slow down or to stop work. The following two contingencies have been calculated through the Due Diligence of the Contractor and shall be calculated against the contingency amounts based on application of the Change Order language of Article 17.

5.2.1 *Construction Contingency.* The Construction Contingency set forth at Article 3.8.1 is for the use of the Contractor, as approved by the Superintendent, to pay for miscellaneous work items which are required to complete the Project including to cover trade scope gaps, missed work, areas of damage that may occur between trades during construction, Subcontractor coordination problems, and Contractor coordination errors. The Contractor shall not use the Construction Contingency to pay for costs related to the following: (a) errors or omissions in the Construction Documents; (b) discrepancies with the Construction Documents pertaining to applicable building code requirements; and/or (c) enhancements or additions to the Scope of Work desired by the Superintendent. The Contractor shall obtain written approval from the Superintendent prior to using the Construction Contingency. The following may be considered, at the Superintendent's sole discretion, valid Construction Contingency items: 1) overtime and premium time, 2) costs to address safety items, 3) Contractor coordination issues and errors, 4) scope gaps, 5) trade damage, and 6) for other items requested by the Contractor if approved by the Superintendent and in the Superintendent's sole discretion. If on Final Completion of the Project, funds are remaining in the Construction Contingency, such funds shall remain unspent and allocated to the Superintendent as the Superintendent sees fit to use.

5.2.2 *Errors and Omissions Contingency.* Within the GMP shall be a line item amount to cover errors and omissions in the Construction Documents ("Errors and Omissions Contingency"). The Errors and Omissions Contingency at Article 3.7.2 is calculated based on coordination review of the Construction Documents and coordination meetings that have been held with the Subcontractors and Architect. Specifically, it is the coordination items that could not be addressed through coordination meetings and a factor determined based on the coordination review that has been performed by Contractor. The Errors and Omissions Contingency is created from Contractor's Due Diligence and based on Contractor's experience on similar projects. As a result, Contractor agrees that Contractor shall not seek to charge Superintendent for Errors and Omissions in excess of the Errors and Omissions Contingency. In other words, the Errors and Omissions Contingency is the maximum sum available to compensate the Contractor for Errors and Omissions on the part of the Architect and Architect's Consultants and is the maximum amount that can be charged. Contractor shall bear all costs for Errors and Omissions that exceed the Errors and Omissions Contingency.

Contractor shall notify the Superintendent under the Change Order Provisions of the need for such work and specifically identify the Work as Errors and Omissions by submitting to the Superintendent for its consideration and approval or disapproval, a

written request for the work before such work is performed. If Superintendent approves such request in writing, the costs of the work, shall be added to or deducted from the Errors and Omissions Contingency within the GMP. Any funds remaining in the Errors and Omissions Contingency at the completion of the Project shall remain unspent and allocated to the Superintendent as the Superintendent sees fit to use, except for any portions of Savings added to the Errors and Omissions Contingency, which Savings shall be allocated between the parties as provided in Article 7 below.

5.3 Due Diligence [*REVIEW AND REVISE TO REFLECT ACTUAL DUE DILIGENCE PERFORMED BY THE CONTRACTOR*]

- 5.3.1 *Documents Reviewed.* Contractor has visited the site, entered and evaluated the structures on the site, reviewed all as-built information, environmental reports, Asbestos Hazard Emergency Response Act of 1986 reports applicable to the Project, lead reports, reports on any other hazardous substances, reviewed environmental impact reports, reviewed applicable mitigation measures for the Project, reviewed and observed the current site conditions, reviewed available records from City and/or Superintendent Records on the Project. All documents provided or reviewed by the Contractor shall be referred to collectively as the Due Diligence Documents.
- 5.3.2 *Review of Existing Conditions.* Contractor must have performed basic confirmation of the As-Built information that exists as part of the Due Diligence process. This basic confirmation shall include:
- 5.3.3 Confirmation of overall dimensions of major column lines, location of elements where coordination of new construction to existing construction is to occur, confirmation that the rooms noted are located on the drawings, review and confirmation that rooms have not been reconfigured.
 - 5.3.3.1 Confirmation of location for utilities and supporting infrastructure. Contractor shall review the utilities and confirm that the infrastructure from the As-Built and Contract Documents are consistent with the actual As-Built Conditions of the Project site.
 - 5.3.3.2 Confirmation that fire/life safety elements are consistent with expectations of the Contract Documents. Specifically, confirmation of the integrity of one-hour corridors, fire separations, working fire sprinklers, working fire alarms, communications systems, EMS systems, and other systems that are to remain in use and relied upon as part of the anticipated Project.
 - 5.3.3.3 Review of the Environmental Documents (Asbestos, Lead, PCB's, etc.) and general confirmation that the scope of hazardous substances is consistent with that which is shown on the environmental reports that are provided.
 - 5.3.3.4 Confirmation of Working hours and specific conditions which will affect the ability to work. Contractor shall check requirements for the local city and county and confirm working hours and days, testing schedules at the Superintendent for days when work shall not occur, other critical days when work cannot occur, mitigation measures in the EIR or Negative Declaration that may affect the ability to Work on the Project. This review shall help Contractor build a working schedule for the Project.
- 5.3.4 *Review of Construction Documents.* Contractor has performed a complete and diligent review of all plans, specifications, addenda, bulletins or other documents provided as

the Construction Documents or otherwise mentioned in the Construction Documents. The Contractor has written and submitted RFIs to address potential design issues prior to the GMP development to obtain a comprehensive GMP that addresses design and constructability issues.

- 5.3.5 *Inconsistencies.* All inconsistencies, timing or sequences which appear to be in error in the Construction Documents shall promptly be called to the attention of the Architect or, Engineer, for interpretation or correction. Local conditions which may affect the structure shall be brought to the Architect's attention at once. In no case, shall the instruction of the Architect be construed to cause work to be done which is not in conformity with the approved plans, specifications, change orders, construction change documents, and as required by law. (See Title 24 Section 4-343)
- 5.3.6 *Coordination Review.* Contractor shall perform a constructability review of the Construction Documents as part of its Due Diligence to determine the level of Errors and Omissions that should be included in the Errors and Omissions Contingency.
- 5.3.7 *Price Fluctuations.* As part of Contractor's Due Diligence responsibilities, Contractor is required schedule and plan to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost to assure that there will be no delays. Contractor understands that this may be a multi-year contract and that materials fluctuate in value and shall have adequately addressed market fluctuations through agreements with Contractor vendors or by other means. Contractor further understands and incorporates into Contractor's proposal cost any wage rate increases during the Project for the Contractor's labor force as well as all other subcontractor and vendor labor forces. Contractor also understands the length of the Project schedule and has incorporated an appropriate budget to include labor, material, and equipment escalation costs into the GMP. At no time will the Superintendent accept any costs associated with these increases. Superintendent shall not be responsible for market fluctuations in costs or labor rate increases during the Project. Contractor further has incorporated any and all cost increases in areas of Work where there may be schedule variations so that cost increases are not passed through to the Superintendent.
- 5.3.8 *Coordination Review.* Contractor has thoroughly reviewed the plans, specifications, and other Due Diligence Documents and satisfied itself that the Construction Contingency is adequate to complete the Project for the GMP.
- 5.3.9 *Due Diligence Determinations.* Contractor has utilized all the available Due Diligence information to verify that the contingencies are adequate and that the Project can be constructed without exceeding the GMP:
 - 5.3.9.1 Construction Contingency. Based on review of the scope of work submitted from each Subcontractor, Contractor's Due Diligence and review shall be utilized to determine the size of the Construction Contingency to cover unforeseen conditions (other than noted in Article 5.1), cover trade scope gaps, missed work, areas of damage that may occur between trades during construction, Subcontractor coordination problems, Contractor coordination errors, and miscellaneous work items.
 - 5.3.9.2 Errors and Omission Contingency. Based on a thorough review of the available Construction Documents and information located pursuant to the Due Diligence performed, a set-aside has been made for an Errors and Omissions Contingency that may be utilized to compensate for construction work to correct Errors and Omissions in the Construction Documents.

5.3.9.3 Superintendent Contingency (sometimes called Owner Contingency). Superintendent Contingency is a sum that is set aside by the Superintendent to address any additional services. In the Superintendent's sole discretion, design errors or omissions as determined by the Superintendent (to the extent the Errors and Omissions Contingency is exhausted) and unforeseen conditions as approved by the Superintendent, may be allocated to the Superintendent Contingency. Specifics on application of the Owner Contingency are set forth at Article 8.

5.3.9.4 Unforeseen Allowance. Unforeseen Allowance is a sum set aside for unforeseen conditions that differ from representations in the Contract Documents or Due Diligence Documents or meet the requirements under Article 13.15.5 and 18.4. The Unforeseen Allowance may also include other costs as allocated in the Superintendent's sole and absolute discretion related to the Project.

5.3.10 *Schedule.* Contractor's Due Diligence will also be critical to the Contractor's determination of the number of days required to complete the Project. Contractor will determine if the suggested number of days from the Superintendent and Architect can be performed and shall also consider whether the Project requires Governmental or Rain day float that exceeds that set forth in Article 9. If Contractor does not note any concerns with the suggested Contract Time, then it is presumed that Contractor is in agreement with the proposed completion date the Contractor, by entering into this Agreement, has determined for itself that the Project Contract Time is realistic, reasonable and includes all required Float under Article 9.

6. OPEN BOOK ACCOUNTING AND SELECTION OF SUBCONTRACTORS

6.1 Open Book Accounting. The Contractor's GMP shall be based on actual procured quotes and bids from Subcontractors, vendors, and suppliers or based on estimated costs. In addition, Contractor shall include an estimated overhead and profit line item along with the cost for Contractor supplied labor. This total construction cost, or Base Cost, shall be added to Subcontractor, vendor and supplier contingencies and the Construction Contingency (which includes an Errors and Omissions Contingency) to form the entire GMP. As costs are incurred during the course of the Project, the Job Cost Accounting shall be updated to include actual costs incurred. A report on costs shall be prepared as part of the GMP process and shall be provided on a monthly basis to the Superintendent.

6.1.1 *Purpose.* While competitive bidding is often viewed as the lowest price, utilizing the lowest bid neither results in the best contractor, efficient construction, or a properly completed product. In some cases, the Project becomes significantly more expensive because competitive bid contractors either don't understand the drawings, aren't qualified to build the Project, or are seeking to utilize the legal process to make money by bringing claims against the Superintendent. The lease leaseback methodology provides the ability to negotiate for the most qualified competent contractor and allow coordination and interaction between the Contractor, Architect and Superintendent to alleviate unnecessary problems or areas that would result in claims. However, in exchange for this flexibility and reduction in claims, it is in the Superintendent's best interests, as a public entity, to ensure that the Project accounting information is available for review and the financial aspects of the Project can be fully reviewed. Thus, Contractor agrees that all job cost information shall be kept in an "open book" manner, shall show the actual transactions that occurred for the Project and shall be disclosable to the State if State funds are being utilized.

6.1.2 *State Allocation Board Issues.* The Office of Public School Construction, the administering agency for the State Allocation Board, audits the costs for construction

under the general authority of Education Code section 17076.10 and under the specific authority of Regulation Section 1859.100 *et seq.* governing program accountability audit, material inaccuracy, and expenditure audits. Given the fact the State has approved the lease-leaseback delivery method, and the likelihood that the records of the Project will be audited if there are State Funds involved, a permanent record of all the financial transactions for the construction of the Project shall be available through an Open Book Accounting of the Project expenditures of both hard and soft costs including, but not limited to labor, material and services costs, including the subcontract and material costs that were utilized to build the Project.

- 6.1.3 *Value Engineering During the Project.* In addition to Value Engineering addressed at Article 7 below, Contractor may have occasion where better pricing can be obtained from Subcontractors or suppliers. This better pricing shall be treated as part of Savings under Article 7.
- 6.2 Scope Reduction Not Savings. The Superintendent at all times shall have the right to reduce the scope of the Project. If the Superintendent reduces the scope of the Project, the GMP shall be reduced to reflect the reduced Scope of Work, pursuant to the provisions of Article 17. To the extent possible, it is the mutual goal of the Superintendent and Contractor to maximize the Scope of Work as allowed by the GMP. Reductions in scope are not considered Savings.
- 6.3 Selection of Subcontractors.
 - 6.3.1 If identified or requested in the Superintendent's Request for Proposal/ Qualifications ("RFP/RFQ"), the Contractor must use any Subcontractors identified and included in the Contractor's response to the Superintendent's RFP/RFQ pursuant to Education Code section 17406(a)(4). All Subcontractors identified and included in the Contractor's response to the Superintendent's RFP/RFQ shall be afforded the protections of the Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code).
 - 6.3.2 Following the award of the Contract to the Contractor by the Superintendent's Board of Education, and for all Subcontractors not identified in the Contractor's response to the Superintendent's RFP/RFQ, the Contractor shall proceed as follows in awarding construction Subcontracts with a value exceeding one-half of one percent of the price allocable to construction work:
 - 6.3.2.1 Provide public notice of availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the Superintendent, including a fixed date and time on which qualifications statements, bids, or proposals will be due.
 - 6.3.2.2 Establish reasonable qualification criteria and standards.
 - 6.3.2.3 Award the subcontract either on a best value basis or to the lowest responsible bidder. The process may include prequalification or short-listing. The process shall not apply to Subcontractors identified and included in the Contractor's response to the Superintendent's RFP/RFQ. Subcontractors awarded construction subcontracts under this Article 6.3.2 shall be afforded all the protections of the Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code).
 - 6.3.2.4 All MEP Subcontractors must be prequalified as set forth in Article 1.12 above.

- 6.3.3 In no case will the Contractor award any subcontracts until the Superintendent has concurred to the scope and price of the subcontracted services.
- 6.3.4 All subcontractors (of any tier) performing any portion of the Work must comply with the Labor Code sections 1725.5 and 1771.1 and must be properly and currently registered with the California Department of Industrial Relations and qualified to perform public works pursuant to Labor Code section 1725.5 throughout the duration of the Project.
- 6.3.5 Contractor shall provide the Superintendent with full documentation regarding the bids or competitive quotes received by Contractor. In no event shall such documentation be redacted or obliterated. In the event the Contractor does not comply with this provision, the Superintendent may terminate this Construction Services Agreement in accordance with the provisions of Article 19 below.
- 6.3.6 Compliance with Disabled Veteran Business Enterprise (DVBE) contracting goals is required under this Construction Services Agreement. In accordance with Education Code section 17076.11 the Superintendent has a DVBE participation goal of 3% per year of the overall dollar amount of state funds allocated to the Superintendent pursuant to the Leroy F. Greene School Facilities Act of 1998, and expended each year by the Superintendent. The Superintendent is seeking DVBE participation under this Construction Services Agreement. The Contractor must require Subcontractors to make a good faith effort to contact and utilize DVBE contractors and suppliers in securing bids for performance of the Project. Their efforts shall be documented on the DVBE Good Faith Effort Form attached as Exhibit "C".

7. SAVINGS AND VALUE ENGINEERING

- 7.1 General Intent. The purpose of Savings is to minimize the expenditure of funds for the construction of the Project on items that exceed the minimum criteria required without a corresponding benefit to the Superintendent. The Superintendent also wishes to eliminate any excess quality levels or performance criteria provided in the Construction Documents so long as such elimination does not alter the design, aesthetics, safety standards or configuration or space, and does not increase future maintenance and operation costs. The Superintendent and the Contractor shall work cooperatively with each other, in good faith, to identify appropriate opportunities to reduce the Project costs and promote Savings. There are two stages when Savings may be generated. They are (1) Value Engineering when establishing the GMP and (2) Savings generated through changes, reductions, or Subcontractor negotiations that may occur after the GMP is established.
 - 7.1.1 *Value Engineering* is a review of systems so excess quality, unnecessary design elements, reconfiguration for efficiency, or other changes may be made to reduce the cost of a project. Sometimes, timing and sequences or re-use of materials that are unique to a project or area may generate savings. For example, if export soil is generated on a site which may have a substantial cost for transportation and removal could be sold to offset the costs incurred then a savings may be generated for the Project. Similarly, if concrete is ground, it may be sold for aggregate rather than as demolished construction materials.
 - 7.1.2 *Other Savings* generated over the course of the Project through Subcontractor negotiations, replacement of Subcontractors, or through other means shall be calculated as part of the overall costs for the Project as part of the "Open Accounting" of the Project and shall be counted towards Project Savings.
- 7.2 Sharing and Calculation for Return of Savings. If Contractor realizes a Savings on an aspect of the Project, including but not limited to, Value Engineering or other Savings after the GMP is established and after execution of this Construction Services Agreement, such Savings shall be

divided in the following proportion: Seventy Five Percent (75%) of any Savings shall be returned to the Superintendent and Twenty Five Percent (25%) of any Savings shall be returned to the Contractor. Calculation of Savings shall be determined by adding all expenses for the Project (excluding Change Orders and Owner and Construction Contingency Expenses), separating out overhead costs and either using the actual overhead costs, or the percentage set for overhead in the Article 5.3, whichever is higher an applying the percentage for profit against the GMP (less Change orders, Owner and Construction Contingency). Any remaining money shall be considered Savings. If the Project expenses exceed the GMP, then there are no Savings for the Project and the GMP shall apply. A separate calculation of whether there are savings associated with Change Orders under the Owner and Construction Contingency may be performed to determine if there are any savings that remain on these areas and applied to the overall savings calculation

- 7.3 Savings Determined Through Audit. Superintendent may, at its own costs, have an audit conducted of the Project related job costs to determine Savings as further outlined in Article 21.

8. SUPERINTENDENT CONTINGENCY

- 8.1 The Superintendent Contingency is an allowance for use by the Superintendent that can be used to pay the Contractor to perform additional services ("Additional Services") not described in this Construction Services Agreement. This Superintendent Contingency is outside of the GMP, is not part of the original bond, except to the extent that Superintendent contingency is utilized as a Change to the Contract under Article 17, and may be used for Owner requested additions, revisions to the Project, moving furniture or equipment, and other Superintendent unforeseen items. Contractor shall provide a cost estimate and a written description of the Additional Services required to perform such work. The Superintendent shall set aside a contingency amount outside the GMP, defined at Article 5 ("Superintendent Contingency") in the amount set forth at Article 3, which Superintendent Contingency shall be used for such Additional Services. Compensation for such Additional Services shall be negotiated and agreed upon in writing, in advance of Contractor's performing or contracting for such Additional Services. Nothing in this Construction Services Agreement shall be construed as limiting the valuation and amount to be paid to Contractor for such Additional Services or its implementation should a written agreement for such services be executed. Contractor shall not be entitled to compensation for Additional Services required as a result of Contractor's acts, errors or omissions. Further any Architectural Errors and Omissions shall not come out of Superintendent Contingency unless agreed upon in writing by the Superintendent in its sole discretion.
- 8.2 Additionally, while Superintendent is in no way limited by the manner in which it decides to utilize the Superintendent Contingency, said Superintendent Contingency shall not be used for any costs associated with errors or omissions in the Construction Documents until such time, if ever, the Errors and Omissions Contingency has been fully exhausted. Any funds remaining in the Superintendent Contingency at the completion of the Project shall remain unspent and remain allocated to the Superintendent.

9. SCHEDULE

- 9.1 Contract Time: Contractor shall perform and reach Substantial Completion (See Article 4.45) within the time specified in the Agreement. Moreover, Contractor shall proceed on a properly developed and approved CPM Master Baseline Schedule, which represents the Contractor's view of the practical way in which the Work will be accomplished. Note that Contract Time includes and incorporates all Float and other Baseline inclusions as noted in Article 9.3 and as otherwise specifically noted in Article 9
- 9.2 Float is the total number of days an activity may be extended or delayed without delaying the Completion Date shown in the schedule. Float will fall into three categories: (1) Rain Days; (2) Governmental Delays; and (3) Project Float. Project Float and Rain Days are owned by the Project and require Superintendent approval prior to being utilized for critical path delays once the days become available for consumption (i.e. the rain day arrives and is not utilized since rain did not

occur or Work was performed on the interior of a building). However, Governmental Delay float shall not be utilized for purposes other than to address critical path delays that arise due to approvals, Inspector approvals or verifications on governmental forms.

- 9.2.1 *Governmental Delay Float.* Given DSA requirements for submission and approval of CCD's prior to a DSA Form 152 sign off on areas of Work that deviate from approved Construction Documents, and the anticipated delays that may arise from this CCD procedure, no less than twelve (12) days per calendar year shall be set aside as Governmental Float to be utilized on critical path delays. A pro-rated number of days shall be calculated based on length of Contract Time. (For example, a two (2) year Contract Time shall require twenty-four (24) days of Governmental Float. If the Contract Time is 182 days, then the Contract Time shall require six (6) days of Governmental Float.) This Governmental Delay float must be incorporated into the schedule and should be incorporated in each critical activity as Contractor deems fit. Specifically, major categories of Work under the DSA 152 (Project Inspection Card) should be allocated Governmental Delay Float at the Contractor's discretion. Governmental Delay Float on the Project may exceed 12 days per one (1) year period, but Contractor is required to include not be less than 12 days of Governmental Delay Float during each one (1) year period.
- 9.2.2 *Inclement Weather (Rain Days).* The Contractor will only be allowed a time extension for unusually severe weather if it results in precipitation or other conditions which in the amount, frequency, or duration is in excess of the norm at the location and time of year in question as established by the National Oceanic and Atmospheric Administration (NOAA) weather data. No less than 22 calendar days for each Calendar year for Southern California. The NOAA weather related days (22 days in Southern California) shall be set aside as float within the Baseline Schedule. Additional days beyond the NOAA shall be considered under the same criteria that weather days are granted below.
- 9.2.3 *Granting of Days beyond those Anticipated.* A Rain Day shall be granted by Architect or CM if the weather prevents the Contractor from beginning Work at the usual daily starting time, or prevents the Contractor from proceeding with seventy-five (75%) of the normal labor and equipment force towards completion of the day's current controlling item on the accepted schedule for a period of at least five hours, and the crew is dismissed as a result thereof, the Architect will designate such time as unavoidable delay and grant one (1) critical path activity calendar-day extension if there is no available float for the calendar year.
- 9.2.4 *Project Float* is all remaining float, including extra days included in a particular activity.
- 9.3 Inclusions in Baseline. In addition to Scheduling requirements set forth at Article 9, Contractor is specifically directed to include in Contractor's Baseline Schedule and all Schedule updates that provide for the following items required pursuant to this CSA, including but not limited to:
- 9.3.1 *Rain Day Float (excluding inclement weather) as required under Article 9.2.2.* For example, if the NOAA provides 22 days of rain days, all 22 days must be incorporated and noted in the schedule. Further, any days required to clean-up or dry out shall be included for operations that are likely to require a clean-up or dry out period. Days that are not utilized shall be considered float owned by the Project.
- 9.3.2 *Governmental Delay Float under Article 9.2.1.* This Governmental Delay Float shall only be utilized for Governmental Delays and shall not be considered available float owned by the Project. This float shall be distributed to the Project as granted and approved by the Superintendent, and shall be used to offset liquidated damages for overstaying the Lease, and shall not generate compensable delays.

- 9.3.3 Submittal and Shop drawing schedule under Article 9.6 and 15.6.
- 9.3.4 Deferred Approvals under Article 15.3 and 15.6
- 9.3.5 Time for separate contractors, including furniture installation and start up activities, under Article 32.
- 9.3.6 Coordination and timing of any drawings, approvals, notifications, permitting, connection, and testing for all utilities for the Project. Article 13.15.2 .
- 9.3.7 Testing, special events, or Superintendent activities.
- 9.4 Schedule Updates. Contractor shall update the schedule (including a narrative) each month to address actual start dates and durations, the percent complete on activities, actual completion dates, estimated remaining duration for the Work in progress, areas of progress, logic and durations, overall assessment of schedule achievement, estimated start dates for Work scheduled to start at future times and changes in duration of Work items.
 - 9.4.1 *Listing of Items Causing Delays.* Schedule Updates shall provide a listing of activities which are causing delay in the progress of Work and a narrative shall be provided showing a description of problem areas, anticipated delays, and impacts on the Construction Schedule. Simply stating “Superintendent Delay” or “Architect Delay” shall be an inadequate listing.
 - 9.4.2 *Recovery Schedule.* In addition to providing a schedule update every thirty (30) days, the Contractor, shall take the steps necessary to improve Contractor’s progress and demonstrate to the Superintendent and Architect that the Contractor has seriously considered how the lost time, the Completion Date, or the milestones that are required to be met within the terms of the Contract. Contractor shall provide a Recovery Schedule showing how Milestones and the Completion Date will be met.
 - 9.4.2.1 Failure to Provide a Recovery Schedule. Shall subject Contractor to the assessment of Liquidated Damages for failure to meet the Contract Time.
- 9.5 Time of the Essence. Time limits stated in the Contract Documents are of the essence to the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work
- 9.6 Time for Preparing Submittals Must Be Incorporated in Schedule: Contractor shall include Submittals as line items in the Baseline Schedule. Time for preparing and coordinating Submittals shall not delay the Work, Milestones, or the Completion Date, and shall be in conformance with Article 15.6.

10. INSPECTION OF WORK/ INSPECTOR AND ARCHITECT

- 10.1 Inspection of Work/Inspector. The Superintendent shall hire its own Division of State Architect Inspector as required by law. Superintendent, Superintendent’s Representatives, and the Division of the State Architect shall at all times have access to the work whether it is in preparation or progress, and Contractor shall provide proper facilities for such access and for inspection.
 - 10.1.1 *General.* One or more Project Inspectors employed by the Superintendent and approved by the Division of the State Architect will be assigned to the Work in accordance with the requirements of Title 24 of the California Code of Regulations. The Inspector(s) duties are as specifically defined in Title 24 Section 4-333 and 4-342 and in DSA IR A-8.

- 10.1.2 *Inspector's Duties and DSA Noted Timelines for Inspection.* All Work shall be under the observation of the Inspector. Contractor shall establish a protocol for requesting inspection with Inspector so as to not delay the Work and provide adequate time for the Inspector to perform inspection. If such a protocol is not established ahead of time, Inspector may utilize the time criteria set by Title 24 of 48 hours in advance of submitting form DSA 156 for each new area. The Inspector shall have free access to any or all parts of the Work at any time. The Contractor shall furnish the Inspector such information as may be necessary to keep the Inspector fully informed regarding progress and manner of Work and character of materials. Such observations shall not, in any way, relieve the Contractor from responsibility for full compliance with all terms and conditions of the Contract, or be construed to lessen to any degree the Contractor's responsibility for providing efficient and capable superintendence. The Inspector is not authorized to make changes in the drawings or specifications nor shall the Inspector's approval of the Work and methods relieve the Contractor of responsibility for the correction of subsequently discovered defects, or from its obligation to comply with the Contract Documents.
- 10.1.3 *Electronic Posting.* Inspector shall electronically post DSA required documents on the DSA electronic posting website. It is the Contractor's responsibility to determine the status of posting and determine if all the criteria for sign off of a category of Work on the Project Inspection Card (Form DSA 152) as defined more thoroughly in the most current version of the DSA 152 manual posted on the DSA website.
- 10.1.4 *Incremental Approvals under PR-13.* Inspector may collaborate with Contractor about approval of areas that may be constructed and approved incrementally under the DSA 152 card pursuant to the guidelines of PR-13. Inspector shall work with Contractor to present incremental approval proposals to DSA.
- 10.1.5 *Inspector's Authority to Reject or Stop Work.* The Inspector shall have the authority to reject Work whenever provisions of the Contract Documents are not being complied with, and Contractor shall instruct its Subcontractors and employees accordingly. In addition, the Inspector may stop any Work that poses a probable risk of harm to persons or property. The Contractor shall instruct its employees, Subcontractors, material and equipment suppliers, etc., accordingly. The absence of any Stop Work Order or rejection of any portion of the Work shall not relieve the Contractor from any of its obligations pursuant to the Contract Documents.
- 10.1.6 *Inspector's Facilities.* Within seven (7) days after notice to proceed, the Contractor shall provide the Inspector with the temporary facilities as required. More specific requirements for the Inspector facilities may be further described under Division 1 of the Specifications.
- 10.1.7 *Testing Times.* The Superintendent will provide inspection and testing at its cost during the normal eight (8) hour day Monday through Friday (except holidays). Work by the Contractor outside of the normal eight (8) hour day shall constitute an authorization from the Contractor to the Superintendent to provide inspection and testing as required outside of the normal eight (8) hour day. Contractor shall provide adequate time for inspections so as to not delay the Work. An advanced timing protocol may be established pursuant to Article 10. If the Contractor is behind Schedule then it is incumbent on the Contractor to provide advance forecast through look ahead of the anticipated date for inspection so the Inspector may plan their activities so as to not delay the Project. Contractor shall reimburse Superintendent for any additional costs associated with inspection and testing (including re-inspection and re-testing) outside the normal eight-hour day and for any retests caused by the Contractor pursuant to Article 10.4.

- 10.1.8 *Contractor Is Required to Coordinate Testing and Inspections.* It is the Contractor's responsibility to request special inspections with sufficient time so all testing may be timely completed and posted so work may proceed and the Inspector's signature is attached to the Project Inspection Card (Form 152). Specifically, timely request for special inspection under the DSA Verified Report Forms 291 (laboratory), DSA Verified Report Form 292 (Special Inspection), and DSA Verified Report 293 (geotechnical) since DSA requirements under PR 13-01 specifically gives the Special Inspections 14 days to post to the DSA website. It is the Contractor's responsibility to timely schedule and pay (if applicable) for Special Inspections as to not delay the Project, and any failure or resulting delay is not considered Governmental Delay Float under Article 9.2.1.
- 10.1.9 *Special Inspection Out of State, Out of Country or Remote from Project.* If Contractor has a Subcontractor or supplier that requires in plant or special inspections or tests that are out of the country, out of state or a distance of more than 200 miles from the Project site, the Superintendent shall provide the Special Inspector or individual performing tests time for inspection and testing during normal work hours. Contractor, however, is responsible for the cost of travel, housing, food, out of area premiums that may be in the Inspector/Testing Agreement with Superintendent, or other expenses necessary to ensure proper inspection or testing is provided by a DSA Certified Inspector, Special Inspector, or individual performing tests. In some cases all three (DSA Inspector, Special Inspector, and Testing) may be required. In addition, if the DSA Certified Inspector, Special Inspector, or individual performing test has contractual travel clauses or special rates for out of town inspection, Contractor is responsible for all costs associated with the contractual travel costs in addition to all other costs. Arrangements for inspection and/or testing shall be made far enough in advance so as to not delay the Work.
- 10.2 **STOP WORK ORDER.** DSA may issue a Stop Work Order, or an Order to Comply, when either (1) the Work proceeds without DSA approval; (2) the Work proceeds without a DSA Project Inspector, or (3) where DSA determines that the Work is not being performed in accordance with applicable rules and regulations, and would compromise the structural integrity of the Project or would endanger lives. If a Stop Work Order is issued, the Work in the affected area shall cease until DSA withdraws the Stop Work Order. Pursuant to Education Code section 17307.5(b) and Education Code section 81133.5, the Superintendent shall not be held liable in any action filed against the Superintendent for any delays caused by compliance with the Stop Work Order, except to the extent that an error or omission by the Superintendent is the basis for the issuance of the Stop Work Order.
- 10.3 **Inspector's Field Office.** Contractor shall provide for the use of inspector a separate trailer or temporary private office of not less than seventy five square feet of floor area to be located as directed by Superintendent and to be maintained until removal is authorized by Superintendent. The Office shall be of substantial waterproof construction with adequate natural light and ventilation. Door shall have a key type lock or padlock hasp. The Inspector's field office shall have heating and air-conditioning and shall be equipped with a telephone, internet connection, working computer, and use of an on-site copier at Contractor's expense. A table satisfactory for the study of plans and two chairs shall be provided by Contractor. Contractor shall provide and pay for adequate electric lights, and adequate heat and air conditioning for the field office until authorized removal.
- 10.4 **RESPONSIBILITY FOR ADDITIONAL CHARGES INCURRED BY THE SUPERINTENDENT FOR PROFESSIONAL SERVICES**
- 10.4.1 If at any time prior to the completion of the requirements under the Contract Documents, the Superintendent is required to provide or secure additional professional services (including CM, Inspection, Architect, Engineering and Special Consultant Services) for any reason by any act of the Contractor, the Superintendent may seek a Deductive

Change Order for any costs incurred for any such additional services, which costs shall be deducted from the next scheduled Progress Payment. A Deductive Change Order shall be independent from any other Superintendent remedies and shall not be considered a waiver of any Superintendent rights or remedies. If payments then or thereafter due to the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Superintendent. Additional services shall include, but shall not be limited to, the following:

- a) Services made necessary by the default of the Contractor (Article 19 or Article 12.2).
- b) Services made necessary due to the defects or deficiencies in the Work of the Contractor.
- c) Preparation of a CCD or ICD to correct a Contractor Deficiency, or Contractor Caused Notices of Non-Compliance (Article 17.2)
- d) Services required by failure of the Contractor to perform according to any provision of the Contract Documents.
- e) Services in connection with evaluating substitutions of products, materials, equipment, Subcontractors' proposed by the Contractor, and making subsequent revisions to drawings, specifications, obtaining DSA approvals, DSA costs for review of CCD's, other governmental agency review costs, and providing other documentation required (except for the situation where the specified item is no longer manufactured or available). (Article 16
- f) Services for evaluating and processing Claims or Disputes submitted by the Contractor in connection with the Work outside the established Change Order or Claims or Disputes process.
- g) Services required by the failure of the Contractor to prosecute the Work in a timely manner in compliance within the specified time of completion.
- h) Services in conjunction with the testing, adjusting, balancing and start-up of equipment other than the normal amount customarily associated for the type of Work involved.
- i) Services in conjunction with more than one (1) re-review of Submittals of Shop Drawings, product data, samples, RFI's etc.

11. **ARCHITECT**

- 11.1 **Architect's Status.** In general and where appropriate and applicable, the Architect shall observe the progress and quality of the work on behalf of the Superintendent. The Architect shall have the authority to act on behalf of Superintendent only to the extent expressly provided in this Construction Services Agreement. After consultation with the Inspector and after using his/her best efforts to consult with the Superintendent, the Architect shall have authority to stop work whenever such stoppage may be necessary in his reasonable opinion to insure the proper execution of the Construction Services Agreement. Contractor further acknowledges that the Architect shall be, in the first instance, the judge of the performance of this Construction Services Agreement
- 11.2 **Architect's Decisions.** Contractor shall promptly notify Superintendent in writing if the Architect fails within a reasonable time, make decisions on all claims of the Superintendent or Contractor and on all other matters relating to the execution and progress of the Project.

12. SUPERINTENDENT RESPONSIBILITIES

- 12.1 Superintendent Site Representations. Superintendent warrants and represents that, Superintendent has, and will continue to retain at all times during the course of construction, legal title to the Site and that said land is properly subdivided and zoned so as to permit the construction and use of said Site. Superintendent further warrants and represents that title to said land is free of any easements, conditions, limitation, special permits, variances, agreements or restrictions which would prevent, limit, or otherwise restrict the construction or use of said facility. However, in the event easements for permanent structures or permanent changes in existing facilities are necessary, they shall be secured and paid for by Superintendent, unless otherwise specified. Reference is made to the fact that Superintendent has provided information on the Site to Contractor. Such information shall not relieve the Contractor of its responsibility; and the interpretation of such data regarding the Site, as disclosed by any borings or other preliminary investigations, is not warranted or guaranteed, either expressly or implicitly, by the Superintendent. The Contractor shall be responsible for having ascertained pertinent local conditions such as location, accessibility and general character of the Site and for having satisfied itself as to the observable, known or documented conditions under which the work is to be performed.
- 12.2 Partial Default: Superintendent Right to Take Over Work (Two (2) day notice to Cure and Correct). If the Contractor Defaults or neglects to carry out the Work in accordance with the Contract Documents, the Superintendent may provide a two (2) business day written notice to cure (a shorter period of time in the case of Emergency or a critical path delay) Contractor's Partial Default in a specific segregated area of work. The Superintendent's right to issue a Partial Default of the Contractor's Work and take over that segregated area of Work includes, but is not limited to:
- a) Failure to supply adequate workers on the entire Project or any part thereof;
 - b) Failure to supply a sufficient quantity of materials;
 - c) Failure to perform any provision of this Contract;
 - d) Failure to comply with safety requirements, or due to Contractor is creation of an unsafe condition;
 - e) Cases of bona fide emergency;
 - f) Failure to order materials in a timely manner;
 - g) Failure to prepare deferred-approval items or Shop Drawings in a timely manner;
 - h) Failure to comply with Contractor's Baseline or Update Schedule, meet critical Milestones which would result in a Delay to the Critical Path, or Delay the Contract Time;
 - i) Failure to comply with the Subcontractor selection and award requirements under Education Code section 17406(a)(4);
 - j) Failure to meet the requirements of the American's with Disabilities Act;
 - k) Failure to complete Punch List work; or
 - l) Failure to proceed on an Immediate Change Directive.
- 12.2.1 *Failure to correct a Notice of Deviation.* If during the two (2) business day period, the Contractor fails to Cure and correct the deficiency noted in the notice of Partial Default with diligence and promptness, the Superintendent may correct such deficiencies without prejudice to other remedies the Superintendent may have, including a Termination for Cause as set forth in Article 19.

- 12.2.2 *Service of Notice of Partial Default with Right to Cure.* A written notice of Partial Default and right to Cure under Article 12.2 (“Article 12.2 Notice” or “Notice of Partial Default”) shall be served by e-mail to the e-mail address provided and copied to the Project Superintendent.
- 12.2.3 *Shortened Time for Partial Default in the Case of Emergencies.* In an Emergency situation, the Superintendent may correct any of the deficiencies described in Article 12.2 without prejudice to other remedies by providing service of written notice of Emergency requiring a shortened time for Partial Default specifying the time given to Cure, if any.
- 12.2.4 *Shortened Time for Partial Default in the Case of Critical Path Delay.* In the case of critical path delay, the Superintendent may correct any of the deficiencies described in Article 12.2 without prejudice to other remedies providing service of written notice of Critical Path Delay to the Contractor with a specific description of the critical path delay items noting the line item or area of Work that is on the Critical Path and prescribe the length of shortened time to Cure, if any.
- 12.2.5 *Written Notice of Partial Default to be Deducted by Deductive Change Order.* The Superintendent shall have the right to determine the reasonable value of the Article 12.2 Partial Default Work, or if there is an actual value for the Work, shall use that value and issue a Deductive Change Orders under Article 17.6.

13. **CONTRACTOR RESPONSIBILITIES.**

- 13.1 **Full Time Supervision.** Contractor shall keep on the Work at all times during its progress a competent, English speaking construction Superintendent satisfactory to the Superintendent. The Superintendent shall be present on a full-time basis, shall be dedicated exclusively to the Project and shall not share superintendency duties with another project or job. The Superintendent shall not be replaced except with written consent of the Superintendent. The Superintendent shall represent the Contractor in its absence and shall be fully authorized to receive and fulfill any instruction from the Architect, the Inspector, the Superintendent or any other Superintendent representative (including CM in the cases where the Superintendent has a CM representative). All Requests for Information shall be originated by the Superintendent and responses thereto shall be given to the Superintendent. No Work shall begin on any day by any Subcontractor or other person on the Project site until the Superintendent has arrived, or shall any Work continue during the day after the Superintendent has departed from the Project site. The Superintendent shall have authority to bind Contractor through the Superintendent’s acts. The Superintendent shall represent the Contractor, and communications given to the Superintendent shall be binding on the Contractor. Before commencing the Work, Contractor shall give written notice to Superintendent (and CM representative) and Architect of the name and a Statement of Qualifications of such superintendent. Superintendent shall not be changed except with written consent of Superintendent, unless a superintendent proves to be unsatisfactory to Contractor and ceases to be in its employ, in which case, Contractor shall notify Superintendent and Architect in writing. Contractor shall provide a replacement superintendent approved by the Superintendent prior to performing additional work.
- 13.2 **Staff.** Notwithstanding other requirements of the Contract Documents, the Contractor and each Subcontractor shall: (1) furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Work; (2) organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the Work; and (3) keep an adequate force of skilled and fit workers on the job to complete the Work in accordance with all requirements of the Contract Documents.
- 13.3 Contractor shall notify Superintendent and Architect, in writing, when Contractor desires to change the Project Manager for the Project, and shall provide the information specified above. The new

Project Manager cannot serve on the Project until approved by Superintendent. Superintendent shall have the right, at any time, to direct a change in Contractor's Project Manager if performance is unsatisfactory, as determined by Superintendent, in its sole discretion.

- 13.4 Contractor shall give efficient supervision to the work, using its skill and attention and shall cause working drawings and specifications to be prepared and submitted to the Superintendent. Following agreement by Contractor and Superintendent with respect to said working drawings and specifications, it shall be Contractor's responsibility to perform the work described in said working drawings and specifications in substantial compliance with the Construction Documents.
- 13.5 Right to Remove. Superintendent shall have the right, but not the obligation, to require the removal from the Project of any superintendent, staff member, agent, or employee of any Contractor, Subcontractor, material or equipment supplier.
- 13.6 Discipline. The Contractor shall enforce strict discipline and good order among the Contractor's and Subcontractor's employees, and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. As used in this subsection, "unfit" includes any person who the Superintendent concludes is improperly skilled for the task assigned to that person, who fails to comply with the requirements of this Article, or who creates safety hazards which jeopardize other persons and/or property.
- 13.7 Labor and Materials
- 13.7.1 *Contractor to Provide.* Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, material, equipment, tools, construction equipment and machinery, water, heat, air conditioning, utilities, transportation, and other facilities, services and permits necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
- 13.7.2 *Quality.* Unless otherwise specified, all materials and equipment to be permanently installed in the Project shall be new and shall be of the highest quality or as specifically stated in the Contract Documents. The Contractor shall, if requested, furnish satisfactory evidence as to kind and quality of all materials and equipment within ten (10) days of a written request by the Superintendent, including furnishing the Superintendent with bona fide copies of invoices for materials or services provided on the Project. All labor shall be performed by workers skilled in their respective trades, and shall be of the same or higher quality as with the standards of other public school construction.
- 13.7.3 *Replacement.* Any work, materials, or equipment, which do not conform to these requirements or the standards set forth in the Contract Documents, may be disapproved by the Superintendent, in which case, they shall be removed and replaced by the Contractor at no additional cost or extension of time to the Superintendent.
- 13.8 Pre-Construction Orientation/Construction Meetings. The Contractor, in conjunction with the Superintendent and the Architect, shall conduct pre construction orientation conferences for the benefit of Subcontractors to orient the Subcontractors to the various reporting procedures and site rules prior to the commencement of actual construction. These Pre-Construction meetings shall include coordination of the Subcontractor Work to help reduce Errors and Omissions and Construction Contingency requests and shall incorporate the Constructability Due Diligence review done by Contractor.
- 13.9 Owner Meetings. The Contractor shall conduct construction and progress meetings with Superintendent Representatives, and Construction Managers that occur at least weekly and as otherwise requested by the Superintendent, to discuss such matters as procedures, progress problems

and scheduling. The Contractor shall prepare and promptly distribute official minutes of such meetings to all parties in attendance including Architect, Superintendent and Inspector.

- 13.10 Budget/Cash Flow Reports. The Contractor shall incorporate approved changes as they occur, and develop cash flow reports and forecasts for submittal to the Superintendent on a monthly basis. The Contractor shall provide regular monitoring of the approved estimates of Construction Costs, showing actual costs for activities in progress, and estimates for uncompleted tasks. The Contractor shall identify variances between actual and budgeted or estimated costs, and advise the Superintendent and the Architect whenever Project costs exceed budgets or estimates. The Contractor shall maintain cost accounting records on authorized additional services or work performed under unit costs, additional work performed on the basis of actual costs of labor and materials, or other work requiring accounting records.
- 13.11 Progress Reports. The Contractor shall record the progress of the Project, and shall submit monthly written progress reports to the Superintendent and the Architect including information on the entire Project, showing percentages of completion and the number and amounts of proposed Extra Work/Modifications and their effect on the Construction Costs as of the date of the report. The Contractor shall also keep a daily log containing a record of weather, Contractors, work on the site, number of workers, work accomplished, problems encountered, and other similar relevant data as the Superintendent may require. The Contractor shall make the log available to the Superintendent and the Architect. The Superintendent shall be promptly informed of all anticipated delays. In the event that the Contractor determines that a schedule modification is necessary, the Contractor shall promptly submit a revised Schedule for approval by the Superintendent
- 13.12 Schedule of Values.
- 13.12.1 *Break Down of Schedule of Values.* Schedule of Values shall be broken down by Project, site, building, milestone, or other meaningful method to measure the level of Project Completion as determined by the Superintendent. The schedule of values shall include, but not be limited, to Subcontractor costs, the costs for the Submittals, Punch Lists, Commissioning and Start-Up, Close Out Submittals, and As-Built.
- 13.12.2 *Based on Contractor Costs.* The Schedule of Values shall be based on the costs from Contractor to the Superintendent. However, the submission of the Schedule of Values shall not be front loaded so the Contractor is paid a greater value than the value of the Work actually performed and shall not shift funds from parts of the Project that are later to Work that is performed earlier.
- 13.12.3 *Largest Dollar Value for Each Line Item.* Identify Subcontractors and materials suppliers proposed to provide portions of Work equal to or greater than ten thousand dollars (\$10,000) or one-half (1/2) of one percent (1%) of their Contract Price, whichever is less, or as otherwise approved in writing by the Superintendent.
- 13.12.4 *Allowances.* Any Allowances provided for in the Contract shall be a line item in the Schedule of Values.
- 13.12.5 *Labor and Materials Shall Be Separate.* Labor and Materials shall be broken into two separate line items unless specifically agreed in writing by the Superintendent.
- 13.12.6 *Superintendent Approval Required.* The Superintendent shall review all submissions of Schedule of Values received pursuant to this Article in a timely manner. All submissions must be approved by the Superintendent before becoming the basis of any payment.
- 13.13 Scheduling. Contractor shall complete the construction pursuant to the CPM Schedule as required under Article 9.

- 13.14 As-Builts. Throughout the duration of the Project, Contractor shall maintain on a current basis an accurate and complete set of As-Built Drawings (and Annotated Specifications) clearly showing all changes, revisions to specifications and substitutions during construction, including, without limitation, field changes and the final location of all electrical and mechanical equipment, utility lines, ducts, outlets, structural members, walls, partitions, and other significant features. In case a specification allows Contractor to elect one of several brands, makes, or types of material or equipment, the annotations shall show which of the allowable items the Contractor has furnished. The Contractor will update the As-Built Drawings and Annotated Specifications as often as necessary to keep them current, but no less often than weekly.
- 13.14.1 *Updates.* Contractor shall update As-Built Drawings with complete information on an area of Work at or near the time when the Work is being performed and prior to any DSA 152 sign off and prior to any Work being covered.
- 13.14.2 *Storage.* The As-Built Drawings and Annotated Specifications shall be kept at the Site and available for review and inspection by the Superintendent and the Architect. Failure to maintain and update the As-Built Drawings is a basis to withhold scheduled Progress Payments pursuant to Article 29.4.
- 13.14.3 *Upon Beneficial Occupancy.* Contractor shall obtain and pay for reproducible plans upon Beneficial Occupancy. Contractor shall deliver Plans to Superintendent Representative (Construction Manager if one is hired for the Project).
- 13.14.4 *As-Builts at Completion of Work.* On completion of the Work and prior to and as a condition precedent to the Application for Retention Payment, the Contractor will provide one neatly prepared and complete set of As-Built Drawings and Annotated Specifications to the Superintendent. Contractor shall certify the As-Builts as a complete and accurate reflection of the actual construction conditions of the Work by affixing a Stamp indicating the Drawings are As-Builts and Certifying Accuracy on the final set of As-Builts.
- 13.14.5 *Log of Control and Survey Documentation.* Contractor shall complete and maintain an accurate log or all control and survey documentation for the Project as the Work progresses. All reference and control points shall be recorded on the As-Built drawings. The basis of elevations shall be one of the established benchmarks that must be maintained on the As-Builts.
- 13.14.6 *Record Coordinates for Key Items.* Contractor shall record, by coordinates, all utilities on-site with top of pipe elevations, major grade and alignment changes, rim, grate or top of curb and flow line elevations of all drainage structures and sewer manholes. Contractor shall update record information at or near the time when work is occurring in an area and prior to DSA 152 sign off on any category of Work and prior to covering the Work.
- 13.15 Miscellaneous Obligations of Contractor
- 13.15.1 *Superintendent Permit and Other Obligations.* It is expressly understood that the Superintendent shall pay the DSA for the DSA inspector, soils testing, DSA fees, special testing, etc. If additional review or permits become necessary for reasons not due to Contractor's fault or because of DSA requirements or regulations implemented after the date the GMP is established and not reasonably anticipated at the time the GMP is established, Contractor may seek compensation only for the direct cost (without mark up or added fees) of that review, as an additional cost. In the alternative, Superintendent may pay such costs directly to DSA. (Offsite costs and additional inspection costs)

- 13.15.2 *Contractor Permit Obligations.* Contractor shall pay for all remaining general building permits and ancillary permits and licenses not paid by Superintendent prior to the commencement of this Construction Services Agreement. Contractor shall also be responsible for arranging and overseeing all necessary inspections and tests, including inspections by the DSA, permits and occupancy permits, and ensure compliance with any Federal and State laws. All municipal charges for permanent utilities including, but not limited to, sewer, electrical, phone, gas, water, and irrigation shall be paid for by Superintendent. Contractor shall be responsible for arranging the payment of such fees by Superintendent at least one (1) week in advance of when the payment is due. Contractor may either request reimbursement from Superintendent for such fees (at direct cost only), or obtain the funds from Superintendent prior to paying such fees.
- 13.15.3 *Protection.* The Contractor shall establish procedures for the protection of all existing structures, equipment, utilities, and other existing improvements, both on site and off site.
- 13.15.4 *Nuisance Abatement.* The Contractor shall develop a mutually agreed upon documented program with the Superintendent to abate and minimize noise, dust, and disruption to normal activities at the existing facilities on the Site, including procedures to control on site noise, dust, and pollution during construction.
- 13.15.5 *Site Mitigation and Remediation.* Contractor shall be required to undertake Site mitigation or remediation at its sole cost for items identified in the Due Diligence Documents provided to Contractor. For hazardous substances and underground conditions that differ from representations in Contract Documents or Due Diligence Documents, Contractor shall provide notice within five (5) days after the discovery of the occurrence of the unforeseen conditions. If Due Diligence Documents and information provided to Contractor does not provide notice of the unforeseen condition, then the costs for such work shall be added as an extra pursuant to Article 17. Costs shall be allocated to the Unforeseen Allowance. However, to the extent Unforeseen Allowance is exceeded, Superintendent may, in its sole and absolute discretion, allocate any costs that exceed the Unforeseen Allowance arising from unforeseen underground conditions and hazardous substances that are not documented in the Construction Documents or in the Due Diligence Documents reviewed to the Superintendent Contingency.
- 13.15.6 *Utilities.* The Contractor shall perform and pay for all temporary utility hook ups and connections; the Superintendent shall pay for use of utilities during construction, as well as any fees owed to utility suppliers for connection to existing mainline facilities. Buildings shall be connected to water, gas, sewer, and electric services, complete and ready for use. Service connections shall be made and existing services reconnected.
- 13.15.7 *Sanitary Facilities.* The Contractor shall provide a sanitary temporary toilet building as directed by the inspector for the use of all workers. The building shall be maintained in a sanitary condition at all times and shall be left at the site until the inspector directs removal. Use of toilet facilities in the work under construction shall not be permitted except by approval of the Inspector.
- 13.15.8 *Layout and Field Engineering.* All field engineering required for laying out this work and establishing grades for earthwork operations shall be furnished by the Contractor at its expense. Such work shall be done by a qualified civil engineer or land surveyor licensed in California and approved by the Architect. Any required "as built" drawings of site development shall be prepared by a qualified civil engineer or land surveyor licensed in California and approved by the Architect.

- 13.15.9 *Cutting and Patching.* Contractor shall do all cutting, fitting, or patching of work as required to make its several parts come together properly and fit it to receive or be received by work of other contractors showing upon, or reasonably implied by, the drawings and specifications for the completed structure. Contractor shall make good after them as Architect may direct. All cost caused by defective or ill-timed work shall be borne by party responsible therefore. Contractor shall not endanger any work by cutting, excavating, or otherwise altering work and shall not cut or alter work of any other contractor without consent or at the direction of Architect.
- 13.15.10 *Documents on the Project Site.* Contractor shall keep one copy of all Contract Documents, including addenda, change orders, Division I, Title 21 of the California Code of Regulations, Parts 1-5 and 12 of Title 24, and Title 22 of the California Code of Regulations, and the prevailing wage rates applicable to the Project, which are a part of Contract Documents, on job at all times. Said documents shall be kept in good order and shall be available to Superintendent representative, Architect and his representatives. Contractor shall be acquainted with and comply with the provisions of said Titles 21, 22 and 24 as they relate to this Project. (See particularly Duties of the Contractor, Title 24 California Code of Regulations, Section 4-343.) Contractor shall also be acquainted with and comply with all California Code of Regulations provisions relating to this Project, particularly Titles 17, 19, 21, 22 and 24.) Contractor shall also make available all books, records, accounts, contracts, bids, etc. upon request of Superintendent.
- 13.15.11 *Contractor to Bind Subcontractors to the Provisions of this Contract.* Contractor shall ensure that Subcontractors are bound to the same extent as Contractor is bound to Superintendent.
- 13.15.12 *Contractor Responsible for Means and Methods.* Contractor shall be solely responsible for the construction means, methods, techniques, sequences, procedures, and coordinating all portions of the work under the Contract Documents, unless the Contract Documents give other specific instructions concerning these matters. Contractor shall be responsible to see that the finished work complies accurately with the Contract Documents. Contractor shall not perform the work without utilizing the Contract Documents or, where required, approved shop drawings, product data, or samples for any such portion of the work.
- 13.15.13 *Contractor Responsible for Acts and Omissions of Employees.* Contractor shall be responsible to Superintendent for acts and omissions of Contractor's employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the work under direct or indirect contract with Contractor or any of its Subcontractors.
- 13.15.14 *General DSA Compliance.* During the entire term of this Agreement, Contractor shall coordinate its services with the Superintendent, Architect, Project Inspector, and other parties to ensure that all requirements set forth in the DSA's Inspection Card (Form 152) and any subsequent revisions or updates thereto issued or required by DSA, or any other/alternate processes are being met in compliance with DSA requirements. Contractor shall take all action necessary as to not delay progress in meeting any DSA requirements. Contractor shall meet any applicable requirements set forth in DSA's Construction Oversight Process Procedure (PR 13-01) and any subsequent revisions or updates thereto issued or required by DSA. Any references to DSA requirements for the Project shall be deemed to include and incorporate any revisions or updates thereto.

13.16 Close Out

- 13.16.1 *All DSA Close-Out requirements (See DSA Certification Guide).* Contractor is also specifically directed to the DSA Certification Guide and the applicable certificates for the DSA-311 form.
- 13.16.2 *Punch List Is Prepared Only After the Project Is Substantially Complete.* The Inspector and Architect shall prepare a Punch List of items which is an inspection report of the Work, if any, required in order to complete the Contract Documents and ensure compliance with the DSA Approved Plans so the Project may be Completed by the Contractor and a final DSA Close-Out is approved. When all Work for the Project is Complete, including Punch Lists and all Work complies with the approved Contract Documents and Change Orders, the Project has reached Final Completion.
- 13.16.3 *Time for Completion of Punch List.* Contractor shall only be given a period of no more than thirty (30) days to complete the Punch List on Project. During the Punch List period Contractor Superintendent and Project Manager shall remain engaged in the Project and shall not be removed or replaced. If the Punch List is not completed at the end of the Punch List time then Contractor shall issue a valued Punch List within 5 days after the date the Punch List time ends. If Contractor does not issue such a list, the Owner or Architect may issue a valued Punch List to the Contractor and withhold up to 150% of the value of the Punch List Work.
- 13.16.4 *As-Builts Up to Date and Complete.* The intent of this procedure is to obtain an exact “As-Built” record of the Work upon completion of the Project. The following information shall be carefully and correctly drawn on the prints and all items shall be accurately located and dimensioned from finished surfaces of building walls on all As-Built drawings:
- 13.16.4.1 The exact location and elevations of all covered utilities, including valves, cleanouts, etc. must be shown on As-Builts
- 13.16.4.2 Contractor is liable and responsible for inaccuracies in As-Built drawings, even though they become evident at some future date.
- 13.16.4.3 Upon completion of the Work and as a condition precedent to approval of release of the Retention Payment, Contractor shall obtain the Inspector’s approval of the “As-Built” information. When completed, Contractor shall deliver corrected sepias and/or a Diskette with an electronic file in a format acceptable to the Superintendent.
- 13.16.4.4 Superintendent may withhold the cost to hire a draftsman and potholing and testing service to complete Record As-Built Drawings at substantial cost if the Contractor does not deliver a complete set of Record As-Built Drawings. This shall result in withholding of between \$10,000 to \$20,000 per building that does not have a corresponding Record As-Built Drawing.
- 13.16.5 *Any Work not installed* as originally indicated on drawings
- 13.16.6 *All DSA Close-Out requirements (See DSA Certification Guide).* Contractor is also specifically directed to the DSA Certification Guide and the applicable certificates for the DSA-311 form.
- 13.16.7 *Submission of Form 6-C.* Contractor shall be required to execute a Form 6-C as required under Title 24 Sections 4-343. The Contractor understands that the filing with DSA of

a Form 6-C is a requirement to obtain final DSA Approval of the Construction by Contractor and utilized to verify under penalty of perjury that the Work performed by Contractor complies with the DSA approved Contract Documents.

- 13.16.8 *Contractor shall be Responsible for All Costs to Certify the Project.* The Superintendent may Certify the Project complies with Approved Construction Documents by utilizing the procedures under the Project Certification Guide (Located at the DSA website at http://www.documents.dgs.ca.gov/dsa/plan_review_process/project_certification_guide_updated_03-15-13.pdf). All costs for professionals, inspection, and testing required for an alternate Project Certification shall be the Contractor's responsibility and the Superintendent reserves its right to institute legal action against the Contractor and Contractor's Surety for all costs to certify the Project and all costs to correct Non-Compliant Work that is discovered during the Alternate Certification Process.
- 13.16.9 *ADA Work that must be corrected* to receive DSA certification. See Article 41.
- 13.16.10 *Maintenance Manuals.* At least thirty (30) days prior to final inspection, three (3) copies of complete operations and maintenance manuals, repair parts lists, service instructions for all electrical and mechanical equipment, and equipment warranties shall be submitted. All installation, operating, and maintenance information and drawings shall be bound in 8½" x 11" binders. Provide a table of contents in front and all items shall be indexed with tabs. Each manual shall also contain a list of Subcontractors, with their addresses and the names of persons to contact in cases of emergency. Identifying labels shall provide names of manufactures, their addresses, ratings, and capacities of equipment and machinery.
- 13.16.11 Maintenance manuals shall also be delivered in electronic media for the Project. Any demonstration videos shall also be provided on electronic media.
- 13.17 Correction of Work: Warranty. Neither a Progress Payment, Sublease Payment nor any provision in the Contract Documents shall relieve Contractor of responsibility for faulty materials or workmanship incorporated in the Project. Contractor warrants that all work under this Construction Services Agreement will be free of faulty materials or workmanship and hereby agrees, within ten (10) days upon receiving notification from Superintendent, to remedy, repair or replace, without cost to Superintendent, all defects which may appear as a result of faulty materials or workmanship in the Project, at any time, or from time to time, during a period beginning with commencement of the Project and ending one (1) years after the date of completion of the Project, as defined in Article 18 hereof. The foregoing warranty of Contractor also applies to the remedy, repair or replacement of defects which may in the documents prepared by Contractor and/or any party retained by, through or under Contractor in connection with the Project, but the foregoing warranty of Contractor does not guarantee against damage to the Project sustained by use, wear, intentional acts, accidents, or lack of normal maintenance or as a result of changes or additions to the Project made or done by parties not directly responsible to Contractor, except where such changes or additions to the Project are made in accordance with Contractor's directions. No guarantee furnished by a party other than Contractor with respect to equipment manufactured or supplied by such party shall relieve Contractor from the foregoing warranty obligation of Contractor. The warranty period set forth herein above shall not apply to latent defects appearing in the Project, and with respect to such defects, the applicable statute of limitations shall apply. Contractor agrees to provide the Superintendent with all equipment and materials warranties provided by manufacturers to Superintendent but has no obligation to assist in processing such warranty claims after said one (1) year warranty period.
- 13.17.1 *Assignment of Subcontracts.* Upon the Completion of the Warranty period, Contractor shall assign to the Superintendent all subcontracts with Subcontractors, material suppliers or other vendors that provided Work for the Project. This assignment shall

include all purchase orders and any change orders or addenda that were executed with the assigned Subcontractor.

13.17.1.1 Documents to be Provided to Superintendent. Contractor shall provide the following documents to the Superintendent as part of Close Out of the Project:

- a. *Subcontractor Warranty.* Contractor shall provide any warranty documents, including warranties consistent with the requirements of this Contract and the Contract Documents.
- b. *Contracts.* Contractor shall provide copies of all subcontracts, amendments, change orders and other documents associated with the Subcontractor's scope of work and price for work on the Project.
- c. *Subcontractors Bound to the Same Extent as Contractor.* The Subcontractors shall be bound to the same extent as the Contractor is bound by this CSA and Subcontractors shall be required to include assignment of their contracts to the Superintendent.
- d. *Bonds Assignable.* Contractor shall ensure that Subcontractor performance and payment bonds are assignable and can be assigned to the Superintendent.
- e. *Unconditional Releases.* Contractor shall provide as part of the Close Out of the Project, Unconditional Releases for each Subcontractor and Material supplier that provided Work for the Project.
- f. *Project Files.* Contractor shall provide the Superintendent a copy of the entire Subcontractor file, including any submittals or shop drawings that were provided by Subcontractor.
- g. *Superintendent Reserves the Right to Assume Subcontractor Contracts Prior to the End of the Warranty Period.* Superintendent reserves the right to take assignment of Subcontractor contracts prior to the end of the warranty period.

13.18 Assignment of Anti-Trust Claims. The Contractor offers and agrees to assign to the Superintendent all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchase of goods, services, or materials pursuant to the Construction Services Agreement. This assignment shall become effective at the time the Superintendent tenders the final Sublease Payment to Contractor, without further acknowledgment by the parties.

14. CONTRACT DOCUMENTS AND INTERPRETATIONS

14.1 The Contract Documents shall be executed, and/or initialed as appropriate, in duplicate by Superintendent and Contractor. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to include all labor, services and materials reasonably necessary for the proper execution of the work.

- 14.2 It is not intended that work and/or services not covered under any heading, section, branch, class or trade of the specifications shall be supplied, unless it is required elsewhere in the Contract Documents or is reasonably inferable therefrom as being necessary to produce the intended results, in which case such work and/or services shall be supplied by Contractor. Words which have well known technical or trade meanings are used herein in accordance with such recognized meanings. Mutual agreement shall be reached with respect to words which do not have a well-known technical or trade meaning and the definition of which come into question.
- 14.3 Plans and Specifications are intended to be fully cooperative and to agree. All Plan and Specification changes shall be dated and sequentially recorded. All modifications to Plans and Specifications shall be interpreted in conformity with the Contract Documents, which shall govern, unless otherwise specified.

15. **SUBMITTALS**

15.1 Definitions

- 15.1.1 *Deferred Approvals.* Approval of certain aspects of the construction may be deferred until the construction Contract has been awarded. To facilitate the design process, DSA grants deferred approval to the design and detailing of certain elements of the Project at the request of the Architect or Engineer of Record. Design elements that may be deferred may include, but are not limited to Access floors, Bleachers, Elevator guide rails and related elevator systems, Exterior wall systems - precast concrete, glass fiber reinforced concrete, etc., Skylights, Window wall systems, storefronts, Stage rigging, and other systems as noted in the Contract Documents. (Also see Article 15.3 and 15.6).
- 15.1.2 *Shop Drawings.* The term “Shop Drawings” as used herein means drawings, diagrams, equipment or product schedules, and other data, which are prepared by Contractor, Subcontractors, manufacturers, suppliers, or distributors illustrating some portion of the Work, and includes: illustrations; fabrication, erection, layout and setting drawings; manufacturer’s standard drawings; schedules; descriptive literature, instructions, catalogs, and brochures; performance and test data including charts; wiring and control diagrams; and all other drawings and descriptive data pertaining to materials, equipment, piping, duct and conduit systems, and methods of construction as may be required to show that the materials, equipment, or systems and their position conform to the requirements of the Contract Documents.
- 15.1.3 *Manufactured* applies to standard units usually mass-produced, and “Fabricated” means items specifically assembled or made out of selected materials to meet individual design requirements. Shop drawings shall: establish the actual detail of all manufactured or fabricated items, indicate proper relation to adjoining work, amplify design details of mechanical and electrical systems and equipment in proper relation to physical spaces in the structure, and incorporate minor changes of design or construction to suit actual conditions.
- 15.1.4 *Submittals* is a term used interchangeably and sometimes refers to Shop Drawings, Product Data, and Samples since all Subcontractor submissions are tracked in a Submittal Log and may include any of the noted items. However, generally, a Submittal is a manufacturer’s product information and product data including description, characteristics, size, physical characteristics, and requirements to prepare the jobsite for receiving of the particular manufactured item.
- 15.1.5 *Samples.* The term “samples” as used herein are physical examples furnished by Contractor to illustrate materials, equipment, or quality and includes natural materials, fabricated items, equipment, devices, appliances, or parts thereof as called for in the Specifications, and any other samples as may be required by the Architect to determine

whether the kind, quality, construction, finish, color, and other characteristics of the materials, etc., proposed by the Contractor conform to the required characteristics of the various parts of the Work. All Work shall be in accordance with the approved samples.

15.2 Shop Drawings.

- 15.2.1 *When Shop Drawings Are Required.* Shop drawings are required for prefabricated components and for installation and coordination of these prefabricated components into the Project. In addition, Shop Drawings, are prepared to address the actual size and installation of components from various Subcontractors and provides an opportunity for the Contractor to coordinate and address conflicts between the subcontracting trades. In some cases, each Subcontractor or trade will provide Shop Drawings in a format agreed upon by Superintendent.
- 15.2.2 *Purpose for Shop Drawings.* Shop drawings are the Contractor's manufacturer, Subcontractor, supplier, vendor or the Contractor's detailed drawings showing particularized method for assembly, specifics to a manufacturer, manufacturer component installation requirements, specifics as to a manufactured item, alterations to a manufactured, a custom created item, or drawn version of more detailed information expanding on the Architect's design shown in the Contract Documents. The Shop Drawings address the appearance, performance, size, weight, characteristics and prescriptive descriptions associated with the Contractor or Contractor's Subcontractor's plan for installation or assembly based on the design in the specifications and Contract Documents. The shop drawing often is more detailed than the information shown in the Contract Documents to give the Architect and Engineer the opportunity to review the fabricator's version of the product (along with particulars specific to that particular product), prior to fabrication. References to the Contract Documents, Construction Documents, Drawings, Plans, and Specifications assist the Architect and Engineer in their review of the Shop Drawings. Attachment of manufacturer's material specifications, "catalog cut sheets," and other manufacturer's information may be provided to accompany Shop Drawings. Because Shop Drawings facilitate the Architect's and Engineer's approval of the system, they should be as clear and complete as possible so they may be reviewed by Architect or Engineer for the Project.
- 15.2.3 *Shop Drawing Requirements.* The Contractor shall obtain and submit with Shop Drawings all seismic and other calculations and all product data from equipment manufacturers. "Product data" as used herein are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate a material, product, or system for some portion of the Work.
- 15.2.4 *Not a Reproduction of Architectural or Engineering Drawings.* The shop drawing are not a reproduction of the architectural or engineering drawings. Instead, they must show more detail than the Construction Documents and details the fabrication and/or installation of the items to the manufacturer's production crew or Contractor's installation crews.
- 15.2.5 *Shop Drawings Engineering Requirements:* Some shop drawings require an engineer stamp to be affixed on the drawings and calculations. In such cases, a current and valid engineering stamp shall be affixed by a California registered engineer. No out of State engineers shall stamp Shop Drawings. (See DSA IR A-18). In most cases, an engineer means California registered mechanical, structural, electrical or plumbing engineer. California Registered Civil Engineers will not be accepted for structural details unless specifically approved by DSA.

- 15.2.6 *DSA Approvals Required Prior to Work.* No work on a Shop Drawing that requires DSA approval may proceed until DSA approval is received. Contractor has provided DSA approval time and allowed adequate time for corrections in Contractor's Schedule as required pursuant to Article 9.
- 15.2.7 *Shop Drawing Identification.* All Shop Drawings must be properly identified with the name of the Project and dated, and accompanied by a letter of transmittal referring to the name of the Project and to the Specification section number for identification of each item clearly stating in narrative form, as well as "clouding" all qualifications, departures, or deviations from the Contract Documents. Shop drawings, for each section of the Work shall be numbered consecutively and the numbering system shall be retained throughout all revisions. All Subcontractor submissions shall be made through the Contractor. Each drawing shall have a clear space for the stamps of Architect and Contractor.
- 15.3 Deferred Approvals. Deferred approvals shall be submitted and processed to ensure all DSA and other governmental approvals are secured so as to not delay the Project. There may be additional requirements for deferred approvals in Division 1 of the Specifications. All deferred approvals shall be prepared by Contractor or Contractor's agent early enough so as to not delay the Project. Contractor is aware that Title 24 California Code of Regulations Section 4-317 has specific requirements for deferred approvals as to governing agencies and as to the Architect and Engineer for the Project. As a result, any delay associated with the time for approval by applicable agencies or by the Architect or Architect's consultants shall be Contractor's. Contractor is required to comply with inclusion of Deferred Approvals in the Schedule as required under Article 9
- 15.3.1 *DSA Approvals Required Prior to Work.* No work on a deferred approval item may proceed on the components until DSA approval is received. Contractor has provided DSA approval time and allowed adequate time for any DSA revisions in Contractor's Schedule as required pursuant to Article 9.
- 15.4 Submittals and Samples
- 15.4.1 *Information Required With Submittals:* Manufacturer, trade name, model or type number and quantities: Information provided must be of sufficient detail to allow Architect and Engineer to compare the submitted item with the specified products and acceptable products listed, in the specification and addenda.
- 15.4.2 *Description of Use and Performance Characteristics:* Information should be furnished describing the normal use and expected performance of the product. The Architect and Contractor review this information to confirm that the product is appropriate for the intended use.
- 15.4.3 *Size and Physical Characteristics:* The size and physical characteristics, such as adjustment capabilities, which is reviewed by both the Contractor and Architect. The Contractor has the most available information for comparing adjoining materials and equipment. The Contractor also needs to know the size and weight of the equipment for lifting and handling considerations.
- 15.4.4 *Finish Characteristics:* The Architect reviews the available finishes and selects the appropriate finish, if the finish was not previously specified in the documents. The Contractor should confirm that finish requirements in the specification are being met by the product.
- 15.4.5 *Contractor Responsible for Jobsite Dimensions:* Some material is custom-fabricated to job conditions, requiring dimensions from the jobsite. These jobsite dimensions are provided by the Contractor as part of the Contractor's responsibilities for the Project

and shall be provided prior to release of the product for manufacture. Contractor shall not rely on Architect or Engineers to provide jobsite dimensions.

- 15.4.6 *Full Range of Samples Required (When Specific Items Not Specified).* Except in cases where the exact color and type of item is specified since the Superintendent is utilizing items Standardized or pre-selected by Superintendent, the full range of color, graining, texture, or other characteristics are anticipated for review in finished products, a sufficient number of samples of the specified materials shall be furnished by the Contractor to indicate the full range of characteristics which will be present in the finished products. Products delivered or erected without Submittal and approval without providing a full range of samples shall be subject to rejection. Except for range samples, and unless otherwise called for in the various sections of the Specifications, samples shall be submitted in duplicate.
- 15.4.7 *Labeling of Samples.* All samples shall be marked, tagged, or otherwise properly identified with the name of the submitting party, the name of the Project, the purpose for which the samples are submitted and the date.
- 15.4.8 *Transmittal letter.* All samples shall be accompanied by a letter of transmittal containing similar information, together with the Specification section number.
- 15.4.9 *Labels and Instructions.* All samples of materials shall be supplied with the manufacturer's descriptive labels and application instructions. Each tag or sticker shall have clear space for the review stamps of Contractor and Architect.
- 15.4.10 *Architect's Review.* The Architect will review and, if appropriate, approve submissions and will return them to the Contractor with the Architect's stamp and signature applied thereto, indicating the timing for review and appropriate action in compliance with the Architect's (or Superintendent's) standard procedures. In the cases where a CM is hired by the Superintendent, CM may be the party that receives and performance logging and initial processing of the Samples. CM may, in some cases, reject samples that are not in conformance with Contract requirements.

15.5 Submittal Submission Procedure

- 15.5.1 *Transmittal Letter and Other Requirements.* All Submittals must be properly identified with the name of the Project and dated, and each lot submitted must be accompanied by a letter of transmittal referring to the name of the Project and to the Specification section number for identification of each item clearly stating in narrative form, as well as "clouding" on the submissions, all qualifications, departures, or deviations from the Contract Documents. Shop drawings, for each section of the Work shall be numbered consecutively and the numbering system shall be retained throughout all revisions. All Subcontractor submissions shall be made through the Contractor. Each drawing shall have a clear space for the stamps of Architect and Contractor. In the case where a CM is hired on the Project, the CM may be designated to receive the Submittals for the Project, log the Submittals, and in some cases reject Submittals that do not conform to Contract requirements.
- 15.5.2 *Copies Required.* Each Submittal shall include one (1) legible, reproducible (if electronic is available, electronic copies shall also be provided) and five (5) legible prints of each drawing or schedule, table, cut sheet, etc., including fabrication, erection, layout and setting drawings, and such other drawings as required under the various sections of the Specifications, until final acceptance thereof is obtained. Subcontractor shall submit copies, in an amount as requested by the Contractor, of: (1) manufacturers' descriptive data for materials, equipment, and fixtures, including catalog sheets showing dimensions, performance, characteristics, and capacities; (2) wiring diagrams

and controls; (3) schedules; (4) all seismic calculations and other calculations; and (5) other pertinent information as required by the Superintendent or Architect.

15.5.3 *Corrections.* The Contractor shall make all corrections required by Architect, Superintendent or CM and shall resubmit, as required by Architect or CM, corrected copies of Shop Drawings or new samples until approved. Contractor shall direct specific attention in writing or on resubmitted Shop Drawings to revisions other than the corrections required by the Architect on previous submissions. Professional services required for more than one (1) re-review of required Submittals of Shop Drawings, product data, or samples are subject to charge to the Contractor pursuant to Article 10.4.

15.5.4 *Approval Prior to Commencement of Work.* No portion of the Work requiring a shop drawing or sample submission or other Submittal shall be commenced until the submission has been reviewed by Contractor and Architect (and CM, if applicable) and approved by Architect (and CM where applicable) unless specifically directed in writing by the Architect. All such portions of the Work shall be in accordance with approved Shop Drawings and samples.

15.5.5 *Superintendent's Property.* All Submittals, Shop Drawings, computer disks, constructability reviews, schedules, annotated specifications, samples and other Submittals shall become the Superintendent's property upon receipt by the Superintendent or Architect.

15.6 Schedule Requirements for Submittals. Contractor shall obtain and shall submit all required Submittals (i.e. Shop Drawings, Deferred Approvals, Samples, etc.), in accordance with Contractor's "Schedule for Submission of Shop Drawings and Samples" as required in the scheduling portion of the CSA at Article 9 and the Specifications (as long as the Specifications do not conflict with CSA. In the case of conflict, the conflicting provision shall be controlled by the CSA and the remaining specification sections shall be interpreted as if the CSA language is inserted) with such promptness as to cause no delay in its own Work or in that of any other contractor or Subcontractor but in no event later than thirty five (35) days after the Notice to Proceed is issued except in the specific cases noted as an exception as set forth below. No extensions of time will be granted to Contractor or any Subcontractor because of its failure to have Shop Drawings and samples submitted in accordance with this Article 15 and the Schedule. Each Subcontractor shall submit all Shop Drawings, samples, and manufacturer's descriptive data for the review of the Superintendent, the Contractor, and the Architect through the Contractor.

15.6.1 *Consideration of Schedule.* Contractor has considered lead times, DSA or other agency governmental review times, Architect or Engineer review times, manufacturing seasons, and specific long lead procurement concerns for all submittals for the Project.

15.6.1.1 All Submittals for the Project except those specifically agreed upon by Superintendent and Architect, in writing, shall be specifically incorporated into the Submittal section of the Schedule so as to not delay the Work. The agreement to allow a later Submittal does not mean that Article 15.6 is waived. Contractor shall order materials and ensure prices are honored and secured for the Project.

a. Structural Steel may be included as a Submittal later than 35 days if Structural Steel is a significant portion of the Work, at least one or some of the Project is a structural steel structural system, or as specifically agreed upon by the Architect or Superintendent.

- b. It is specifically agreed that submissions of structural steel Submittals shall not be piecemeal (unless some portion is requested separately by the Owner or Architect), shall provide complete designs, shall be stamped by the Structural Steel Subcontractor, Contractor, and Structural Steel Subcontractor's structural engineer at time of submission and as further addressed in this Article.
- c. In no case shall the submission of Structural Steel Drawings delay the critical path for the schedule. If a Milestone is provided for submission of complete structural steel Shop Drawings then the date shall be no later than as set forth in the Milestone

15.6.1.2 Exceptions to Submittal Within Thirty-Five (35) Days by Written Agreement. A written request detailing the specific reasons for a submission later than 35 days due to complexity of design, or non-critical path status of the Submittal shall be submitted at the time the Baseline Schedule is submitted. The Baseline Schedule shall not include a delayed Submittal until written agreement is provided. In addition to the request for providing a Submittal after the thirty-five (35) day period, a copy of the Contract with the Subcontractor who shall be performing the Submittal, a written statement from the Subcontractor verifying that work has commenced on the Submittal and providing Subcontractor's own schedule of milestones and completion dates, and a corresponding Submittal designation in the Schedule as required under Article 9

- a. Approval of a delayed Submittal shall not result in any increase in the Contract Price or result in an extension of time for the completion of the Project.

15.6.1.3 Piecemeal Submissions of Submittals. Piecemeal Submittals mean providing portions of Shop Drawings or Submittals as they are being completed. The submission of piecemeal Submittals results in the appearance of a submission when there is inadequate information for the Architect or Engineer to adequately review a submission. Piecemeal differs from submission of complete buildings or phases of buildings or complete assemblies. The Architect may agree to allow submission of single buildings or areas as long as the Submittals are complete.

15.7 General Submittal Requirements

15.7.1 *Contractor Submittal Representations.* By submitting Shop Drawings, product data, samples, etc., the Contractor represents that it has determined and verified all materials, field measurements, catalog numbers, related field construction criteria, and other relevant data in connection with each such submission, and that it has checked, verified, and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents, including the construction schedule.

15.7.2 *Contractor Coordination.* By submitting Shop Drawings, Submittals, product data, samples, etc., the Contractor represents that it has determined and verified all materials, field measurements, catalog numbers, related field construction criteria, and other relevant data in connection with each such submission, and that it has checked, verified, and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents, including the construction

schedule. Contractor shall stamp, sign, and date each Submittal indicating its representation that the Submittal meets all of the requirements of the Contract Documents and evidence Contractor's review through execution of the following stamp to be placed on each Shop Drawings:

"The [contractor] has reviewed and approved the field dimensions and the construction criteria, and has also made written notation regarding any information in the Shop Drawings and Submittals that does not conform to the Contract Documents. This Shop Drawing or Submittal has been coordinated with all other Shop Drawings and Submittals received to date by me as Contractor and this duty of coordination has not been delegated to Subcontractors, material suppliers, the Architect, or the Engineers on this Project.

Signature of Contractor and date

- 15.7.3 *No Deviation from Contract Documents.* The submission of the Shop Drawings, product data, samples, etc., shall not deviate from the requirements of the Contract Documents including detailing and design intent which is specifically outlined in Contract Documents except as specifically authorized by the Architect or through an accepted substitution pursuant to Article 16. All deviations from the Contract Documents shall be narratively described in a transmittal accompanying the Shop Drawings. However, Shop Drawings shall not be used as a means of requesting a substitution, the procedure for which is defined in Article 16, "Substitutions."
- 15.7.4 *Contractor Responsibility for Shop Drawings Conformance to Contract Documents.* Review by Superintendent and Architect shall not relieve the Contractor or any Subcontractor from its responsibility in preparing and submitting proper Shop Drawings in accordance with the Contract Documents.
- 15.7.5 *Incomplete Submittals.* Any submission, which in Architect's opinion is incomplete, contains errors, or has been checked superficially will be returned unreviewed by the Architect for resubmission by the Contractor.
- 15.7.6 *Shop Drawings and Submittals Shall Not Be Used as a Method to Make a Substitution.* Shop drawings and Submittals shall not be used as a means of requesting a substitution or to make changes in the Contract Documents. If changes are made to the Contract Documents through the Shop Drawings, the Architect shall have the right to reject the Submittal. If the Architect does not note the deviation from the approved Construction Documents, the Contractor is still responsible for the change and the Architect or the Superintendent may require the Shop Drawings be revised to properly reflect the approved Contract Documents. The Architect or Superintendent may also require that the Contractor bear all costs under Article 10.4 and consequential damages associated with a CCD to revise Construction Documents to accommodate the deviation from approved Construction Documents.
- 15.7.7 *Extent of Review.* In reviewing Shop Drawings, the Architect will not verify dimensions and field conditions. The Architect will review and approve Shop Drawings, product data, samples, etc., for aesthetics and for conformance with the design concept of the Work and the information in the Contract Documents. The Architect's review shall neither be construed as a complete check which relieves the Contractor, Subcontractor, manufacturer, fabricator, or supplier from responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract Documents unless the Contractor has, in writing, called the Architect's attention to the deviations at the time of submission. The Architect's review shall not relieve the

Contractor or Subcontractors from responsibility for errors of any sort in Shop Drawings or schedules, for proper fitting of the Work, coordination of the differing Subcontractor trades and Shop Drawings and Work which is not indicated on the Shop Drawings at the time of submission of Shop Drawings. Contractor and Subcontractors shall be solely responsible for any quantities which may be shown on the Submittals or Contract Documents.

16. REQUEST FOR SUBSTITUTIONS

- 16.1 For purposes of this provision the term “substitution” shall mean a change in product, material, equipment, or method of construction from those required by the Construction Documents proposed by the Contractor.
- 16.2 Public Contract Code section 3400 does not apply to this agreement since the materials, services, and equipment used has been investigated as part of the Due Diligence investigation by Contractor and incorporated in the overall GMP.
- 16.3 Contractor may submit requests together with substantiating data for substitution of any “or equal” material, process or article. Any savings generated from the substitution shall be considered Project Savings under Article 7. The Superintendent shall not be responsible for any costs of Contractor associated with “or equal” substitution requests. The Superintendent has the complete and sole discretion to determine if a material, process or article is an “or equal” material, process or article that may be substituted. The data required to substantiate requests for substitutions of an “or equal” material, process or article data shall include a signed affidavit from the Contractor stating that the substituted “or equal” material, process or article is equivalent to that specified in the specification in every way except as listed on the affidavit. Substantiating data shall also include:
1. Is equal in quality/service/ability to the Specified Item;
 2. Will entail no changes in detail, construction, and scheduling of related work;
 3. Will be acceptable in consideration of the required design and artistic effect;
 4. Will provide no cost disadvantage to the Superintendent;
 5. Will require no excessive or more expensive maintenance, including adequacy and availability of replacement parts; and
 6. Will required no change of the construction schedule
- 16.4 Failure to submit all the needed substantiating data, including the signed affidavit, to the Architect in a timely fashion so that the substitution can be adequately reviewed may result in the rejection of the proposed substitution. The Superintendent is not obligated to review multiple substitution submittals for the same product or item due to the Contractor’s failure to submit a complete package initially.
- 16.5 Contractor shall bear the costs of all architectural and engineering work, DSA CCD review fees, and other costs associated with the review of submittals for substitution. See Article 10.4.
- 16.6 Contractor agrees to include the provisions of this Article in all Subcontractor contracts.

17. EXTRA WORK/MODIFICATIONS (INCLUSION OF CCD COSTS, DSA COSTS, AND AN ICD PROCESS)

- 17.1 No Changes Without Authorization. There shall be no change whatsoever in the drawings, specifications, or in the Work without an executed Change Order, Change Order Request, Immediate Change Directive, or order by the Architect for a minor change in the Work as herein

provided. Superintendent shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless authorized Superintendent representative has approved the cost in writing by Change Order or executed Construction Change Document. No extension of time for performance of the Work shall be allowed hereunder unless claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in writing in the Change Order. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications. Notwithstanding anything to the contrary in this Article 17, all Change Orders shall be prepared and issued by the Architect and shall become effective when executed by the authorized Superintendent representative (utilizing either a Construction Contingency Amount or a Superintendent Contingency Amount), the Architect, and the Contractor.

CONTRACTOR UNDERSTANDS, ACKNOWLEDGES, AND AGREES THAT THE REASON FOR THIS NOTICE REQUIREMENT IS SO THAT SUPERINTENDENT MAY HAVE AN OPPORTUNITY TO ANALYZE THE WORK AND DECIDE WHETHER THE SUPERINTENDENT SHALL PROCEED WITH THE CHANGE ORDER OR ALTER THE PROJECT SO THAT SUCH CHANGE IN WORK BECOMES UNNECESSARY AND TO AVOID THE POSSIBLE DELAYS ASSOCIATED WITH THE ISSUANCE OF A NOTICE OF NON-COMPLIANCE.

- 17.2 Notices of Non-Compliance. Contractor deviation or changes from approved Construction Documents may result in the issuance of a Notice of Non-Compliance (See DSA Form 154). Contractor is specifically notified that deviations from the Construction Documents, whether major or minor, may result in the requirement to obtain a DSA Construction Change Document to correct the Notice of Non-Compliance. (See Article 17.4.1.1 for Definition of CCD). In some cases, the lack of a DSA approved CCD AND verification from the Inspector that a Notice of Non-Compliance has been corrected may result in a critical path delay to the next stage of Work on the Project. Specifically, a deviation from approved Construction Documents may prevent approval of the category of Work listed in the DSA 152 Project Inspection Card. Any delays or cost impacts that are caused by the Contractor's deviation from approved Construction Documents shall be the Contractor's responsibility.
- 17.3 Architect Authority. The Architect will have authority to order minor changes in the Work that do not involve DSA Approval not involving any adjustment in the Contract Sum, or an extension of the Contract Time.
- 17.4 CONSTRUCTION CHANGE DOCUMENT (CCD Category A, and CCD Category B) and IMMEDIATE CHANGE DIRECTIVE (ICD)

17.4.1 *Definitions*

- 17.4.1.1 Construction Change Document (CCD). A Construction Change Document is a DSA term that is utilized to address changes to the DSA approved Construction Documents. There are two types of Construction Change Documents. (1) DSA approved CCD Category A (DSA Form 140) for Work affecting Structural, Access or Fire-Life Safety of the Project which will require a DSA approval; and, (2) CCD Category B (DSA Form 140) for work NOT affecting Structural Safety, Access Compliance or Fire and Life Safety that will not require a DSA approval (except to confirm that no Approval is required);
- 17.4.1.2 Immediate Change Directive (ICD). An Immediate Change Directive is a written order to the Contractor prepared by the Architect and signed by the Superintendent (and CM if there is a CM on the Project) and the Architect, directing a change in the Work and stating a proposed basis

for adjustment, if any, in the Contract Sum or Contract Time, or both. The Superintendent may by ICD, without invalidating the Contract, direct immediate changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions within. If applicable, the Contract Sum and Contract Time will be adjusted accordingly.

In the case of an Immediate Change Directive being issued, Contractor must commence Work immediately or delays from failure to perform the ICD shall be the responsibility of Contractor and the failure to move forward with Work immediately shall also be grounds for Termination under Article 19 or determination of partial default under Article 12.2.

An ICD does not automatically trigger an Article 20 Dispute or Claim. Contractor must timely follow the procedures outlined at Article 20 and this Article where applicable.

Refer to Forms for a copy of the proposed Immediate Change Directive form.

- 17.4.1.3 Use to Direct Change. An ICD shall be used to move work forward immediately and to avoid delay. In some cases, an ICD shall be issued in the absence of agreement on the terms of an Extra, or RFP. A copy of an ICD form is provided in the Forms included with this CSA. The anticipated not to exceed price for the Work will be inserted into the ICD. In the case of an ICD issued to correct Contractor Deficiencies or to correct a Contractor caused Notice of Non-Compliance, the ICD may be issued with \$0 and 0 time. Contractor may prepare an Extra associated with the ICD pursuant to Article 17. However, Contractor shall proceed with all Work required under an Approved ICD immediately upon issuance. Failure to proceed with the Work under an ICD shall be grounds for Termination for Cause under Article 19 or take over the Work under Article 12.2.

If adequate time exists, an ICD may be subject to a request for pricing and a determination if any additional time may be required. However, if a request for pricing is not completed, Contractor shall immediately commence Work when an ICD is issued. If the request for pricing is incomplete, it may still be completed and submitted for consideration by the Superintendent (in its sole discretion) for pricing purposes as long as the request for pricing is submitted within the timeline required, or within 10 days following issuance of the ICD.

- 17.4.1.4 ICD Issued Over a Notice of Non-Compliance or to Cover Work Subject to a DSA 152 Sign Off. In some cases, an ICD shall be for the purpose of proceeding with Work to keep the Project on Schedule and as an acknowledgement by the Superintendent that Contractor is proceeding with Work contrary to a Notice of Non-Compliance, prior to issuance of a DSA approved CCD Category A, or to direct the covering of Work which has not yet received a DSA 152 Inspection Approval to move forward.

- a. *Contractor Compliance with all Aspects of an ICD.* Contractor is to undertake the ICD and comply with all aspects of the Work outlined in the ICD. Inspector is to inspect the Work pursuant to the ICD. Failure to follow the ICD may result in deduction

of the ICD Work under Article 12.2 or Termination of the Contractor pursuant to Article 19.

- b. *Exception in the Case of DSA Issued Stop Work Order.* Contractor must proceed with an ICD even if a CCD has not been approved by DSA except in the case of a DSA issued Stop Work Order. If a DSA Stop Work Order is issued, Contractor must stop work and wait further direction from the Superintendent.
- c. *ICD Due to Contractor Deficiency or Contractor Caused Notice of Non-Compliance.* If an ICD is issued to correct a Contractor Deficiency or a Contractor caused notice of Non-Compliance, Contractor specifically acknowledges responsibility for all consequential damages associated with the Contractor Deficiency or Contractor Caused Notice of Non-Compliance and all consequential damages and costs incurred to correct the deficiency under Article 10.4.

17.5 Extras Request. Extra work or a modification or reduction of requirements or of methods of performing the Construction which differ from the work or requirements set forth in the Construction Documents ("Extra Work/Modifications"); and for such purposes, the Superintendent may at any time during the life of this Construction Services Agreement by written order, make such changes as it shall find necessary from Construction Contingency if Superintendent approves such request in writing. The costs of the Extra Work/Modifications, as established pursuant to this Article, shall be deducted from the Construction Contingency as mutually agreed in writing or the Errors and Omissions Contingency or the Unforeseen Allowance as determined by the Superintendent, and shall not affect the GMP.

17.5.1 *Format.* The following format shall be used, as applicable by the Superintendent and the Contractor to communicate proposed additions and deductions to the Contract. A copy of a proposed Construction Change Document form is provided in Division 1 of the Specifications. The most stringent guidelines will apply to all forms.

	<u>EXTRA</u>	<u>CREDIT</u>
<u>For Work Performed by Subcontractor:</u>		
(a) Material (attach itemized quantity and unit cost plus sales tax)	_____	_____
(b) Equipment (attach invoices)	_____	_____
(c) Labor Not to Exceed Applicable Prevailing Wage Rates (attach itemized hours and rates)	_____	_____
(d) Subcontractor's Direct Cost- Subtotal of (a) through (c)	_____	_____

	<u>EXTRA</u>	<u>CREDIT</u>
(e) For work performed by Subcontractor, add Subcontractor's overhead and profit not to exceed 10% of Item (d). Contractor may include 5% of Item (d) for its overhead and profit.		
Note: Do not include any costs covered in this Item (e) if Change Order will be paid using an Allowance or Contingency that is within or included in the GMP- see Item (o) below.	_____	_____
(f) Bond and insurance costs not to exceed one percent (1%) of Item (d). Do not include any costs covered in this Item (f) if Change Order will be paid using the Superintendent's Allowance- see Item (o) below	_____	_____
(g) SUBCONTRACTOR'S TOTAL COST:	_____	_____

For Work Performed by Contractor:

(h) Material (attach itemized quantity and unit cost plus sales tax)	_____	_____
(i) Equipment (attach invoices)	_____	_____
(j) Labor Not to Exceed Applicable Prevailing Wage Rates (attach itemized hours and rates)	_____	_____
(k) Contractor's Direct Cost- Subtotal of (h) through (j)	_____	_____
(l) For work performed by Contractor, add Contractor's overhead and profit not to exceed 10% of Item (k).		
Note: Do not include any costs covered in this Item (l) if Change Order will be paid using an Allowance or Contingency that is within or included in the GMP - see Item (o) below.	_____	_____
(m) Bond and insurance costs not to exceed one percent (1%) of Item (k). Do not include any costs covered in this Item (m) if Change Order will be paid using an Allowance or Contingency that is within or included in the GMP - see Item (o) below.	_____	_____
(n) CONTRACTOR'S TOTAL COST:	_____	_____
(o) Approved Cost/CO to be paid by an Allowance or Contingency within or included in the GMP? <input type="checkbox"/> Yes <input type="checkbox"/> No		

		<u>EXTRA</u>	<u>CREDIT</u>
	TOTAL COST OF CHANGE ORDER		
	(ITEM (g) + ITEM (n)):	_____	_____
(k)	Approved Time/ Days	_____	_____

The undersigned Contractor approves the foregoing Extra Work as to the changes, if any, and the contract price specified for each item and as to the extension of time allowed, if any, for completion of the entire work on account of said Extra Work, and agrees to furnish all labor, materials and service and perform all work necessary to complete any additional work specified therein, for the consideration stated herein. It is understood that said Extra Work shall be effective upon approval from the Superintendent's Designee if such amounts are against the GMP and if Owner Contingency is used when approved by the Governing Board of the Superintendent.

It is expressly understood that the value of such extra Work or changes, as determined by any of the aforementioned methods, expressly includes any and all of the Contractor's costs and expenses, both direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project. Any costs, expenses, damages or time extensions not included are deemed waived.

The Contractor expressly acknowledges and agrees that any change in the Work performed shall not be deemed to constitute a delay or other basis for claiming additional compensation based on theories including, but not limited to, acceleration, suspension or disruption to the Project.

- 17.5.2 Should Contractor claim that any instruction, request, drawing, specification, action, condition, omission, default, or other situation (i) obligates the Superintendent to pay additional compensation to the Contractor; or (ii) obligates the Superintendent to grant an extension of time for the completion of the Construction Services Agreement; or (iii) constitutes a waiver of any provision in this Construction Services Agreement, CONTRACTOR SHALL NOTIFY THE SUPERINTENDENT, IN WRITING, OF SUCH CLAIM AS SOON AS POSSIBLE, BUT IN NO EVENT WITHIN MORE THAN TEN (10) BUSINESS DAYS FROM THE DATE CONTRACTOR HAS ACTUAL OR CONSTRUCTIVE NOTICE OF THE CLAIM. CONTRACTOR SHALL ALSO PROVIDE SUPERINTENDENT WITH SUFFICIENT WRITTEN DOCUMENTATION SUPPORTING THE FACTUAL BASIS OF THE CLAIM under Article 20. Contractor shall be required to certify under penalty of perjury the validity and accuracy of any claims submitted. The Contractor's failure to notify the Superintendent within the ten (10) business day period shall be deemed a waiver and relinquishment of the claim against the Superintendent. If such notice be given within the specified time, the procedure for its consideration shall be as stated above in this Section.
- 17.5.3 All costs associated with the Extra Work/Modification may be in terms of time, money or both.
- 17.6 Deductive Change Orders
 - 17.6.1 All Deductive Change Order(s) must be prepared utilizing the form under Paragraph 17.5 (a)-(d) only setting forth the actual costs incurred. Except in the case of an Article 12.2 or 29.4 Deductive Change Order where no mark-up shall be allowed, Contractor will be allowed a maximum of 5% total profit and overhead.
 - 17.6.2 For Unilateral Deductive Change Orders, or where credits are due from Contractor for Allowances, Deductive Items, Inspection, Damage, DSA CCD review costs, Architect

or Inspector costs for after hours or corrective services, Work removed from the Agreement under Article 12.2 or Article 29.4, there shall be no mark-up.

- 17.6.3 Superintendent may, at any time, after a Deductive Change Order is presented to Contractor by Superintendent for items under Article 12.2 or Article 29.4 of if there is disagreement as to the Deductive Change Order, issue a unilateral Deductive Change Order on the Project and deduct the Deductive Change Order from a Progress Payment or the Retention Payment.

18. TIME OF COMPLETION

- 18.1 ONCE THE SUPERINTENDENT HAS ISSUED A NOTICE TO PROCEED, CONTRACTOR SHALL PROCEED WITH THE CONSTRUCTION OF THE PROJECT WITH REASONABLE DILIGENCE. CONTRACTOR AGREES THAT THE PROJECT WILL BE SUBSTANTIALLY COMPLETE WITHIN THE CALENDAR DAYS DESIGNATED IN ARTICLE 3 FROM THE NOTICE TO PROCEED. SAID CONTRACT TIME MAY BE EXTENDED FOR SUCH PERIODS OF TIME AS ALLOWED UNDER THE CONTRACT DOCUMENTS. IF THE PROJECT IS NOT SUBSTANTIALLY COMPLETED IN ACCORDANCE WITH THE FOREGOING, IT IS UNDERSTOOD THAT THE SUPERINTENDENT WILL SUFFER DAMAGE SINCE CONTRACTOR HAS OVERSTAYED ITS LEASE TERM. IT BEING IMPRACTICAL AND INFEASIBLE TO DETERMINE THE AMOUNT OF ACTUAL DAMAGE, IT IS AGREED THAT CONTRACTOR'S EXTENSION OF THE LEASE SHALL RESULT IN LIQUIDATED DAMAGES, AND NOT AS A PENALTY, THE SUM SET FORTH IN ARTICLE 3 FOR EACH CALENDAR DAY OF DELAY UNTIL WORK IS SUBSTANTIALLY COMPLETED. CONTRACTOR AND ITS SURETY SHALL BE LIABLE FOR THE AMOUNT THEREOF. ANY MONEY DUE OR TO BECOME DUE THE CONTRACTOR MAY BE RETAINED BY THE SUPERINTENDENT TO COVER SAID LIQUIDATED DAMAGES FOR OVERSTAYING THE LEASE. SHOULD SUCH MONEY NOT BE SUFFICIENT TO COVER SAID LIQUIDATED DAMAGES, THE SUPERINTENDENT SHALL HAVE THE RIGHT TO RECOVER THE BALANCE FROM THE CONTRACTOR OR ITS SURETIES, WHO WILL PAY SAID BALANCE FORTHWITH.
- 18.2 Within five (5) business days after the Project commencement date in the Superintendent's Notice to Proceed, Contractor shall furnish Superintendent with a Baseline CPM (Critical Path) Schedule pursuant to Article 9. The Contractor shall include the Superintendent's occupancy requirements showing portions of the Projects having occupancy priority.
- 18.3 Contractor shall not be charged for liquidated damages, as set forth in the Agreement, for materially differing underground soil conditions than those outlined in the soils report and from hazardous substances that are encountered that are not documented in the Contract Documents or in the Due Diligence Documents provided to Contractor.
- 18.3.1 In case of encountering such unforeseen conditions noted above, Contractor shall notify the Superintendent in writing immediately and no later than seven (7) days following encountering the unforeseen condition. After providing written notice, Contractor shall test and provide Superintendent with Test results (unless Superintendent choses to test) and shall proceed with Work based on the Test results. A Change Order pursuant to Article 17 shall be submitted. All time and expenses shall be verified with the Inspector or Superintendent Designee either on the day the extra work occurs, but no later than 10 am the following business day.
- 18.3.2 Change Orders associated with approved unforeseen conditions shall be billed as Change Order Work and allocated to the Unforeseen Allowance, and if the Unforeseen Allowance is exceeded, the Superintendent, in its sole and absolute discretion, may allocate such costs to the Superintendent Contingency to the extent unforeseen conditions as defined in this Article are encountered.

- 18.4 Contractor shall within ten (10) calendar days of beginning of any such delay notify Superintendent in writing of causes of delay. Thereupon Superintendent shall ascertain the facts and extent of delay and grant extension of time for completing work when, in its judgment, the findings of fact justify such an extension. Superintendent's findings of fact thereon shall be final and conclusive on the parties hereto. Extension of time shall apply only to that portion of work affected by the delay, and shall not apply to other portions of work not so affected. Contractor agrees that the extension of time granted under this Article shall be its sole and exclusive remedy for the consequences of any delay described above. For any such delay resulting from the actions or inactions of Architect, Superintendent, or their officers, agents, and employees, or changes to the scope of the Work which impact the schedule, Contractor shall be entitled to reimbursement for its reasonable additional costs resulting from such delay, but not any additional profit or fee.
- 18.5 Contractor acknowledges the extreme importance of promptly notifying and thoroughly documenting any request for time extension and further specifically acknowledges that Superintendent will suffer extreme prejudice should Contractor fail in any way to comply with this requirement. Failure to comply with the procedures and time limits established in this Article shall constitute a waiver of such request. Evidence presented by Contractor that Superintendent had actual notice of the time extension request, that Superintendent was not prejudiced by Contractor's failure to comply with this requirement, and/or that Superintendent considered Contractor's request despite Contractor's failure to strictly comply with this provision shall not render this requirement unenforceable.
- 18.6 Contractor is required to order, obtain, and store materials and equipment sufficiently in advance of its work at no additional cost or advance payment from Superintendent to assure that there will be no delays. An extension of time will not be granted for a delay caused by a shortage of materials.
- 18.7 Contractor shall not be entitled to additional compensation for delays within its control. Contractor is aware that governmental agencies, such as the Department of General Services, gas companies, electrical utility companies, water districts and other agencies may have to approve Contractor-prepared drawings or approve a proposed installation. In the event of delays to the Project from such agencies for which Contractor has no control, provided such delays are not caused by Contractor's or any Subcontractor's acts or omissions, Contractor may be entitled to a time extension for such delays, but shall not be allowed additional compensation for the costs of such delays not impacting the Project's critical path.
- 18.8 Superintendent reserves the right to occupy any building or portion thereof or use any improvement contemplated by the Contract Documents prior to the completion of the entire Project. A list of work to be completed and corrected by Contractor, if any, shall be prepared and agreed to between Superintendent and Contractor before any such occupancy or use. Such occupancy or use shall not operate as an acceptance of any part of the Project but shall start the guaranty-warranty period on the structure or portion thereof so occupied or improvement or equipment so used; provided, however, that such occupancy or use shall not start the guaranty-warranty period as to items appearing on the list of work yet to be completed and corrected or as to structures or improvements (or portions thereof) that are not occupied or used. No such occupancy or use shall be deemed to have occurred unless and until Superintendent has given Contractor written notice of its intention to so occupy or use any particular structure or improvement specifying the portion or portions of the structure, improvement or equipment which will be deemed so occupied or used. Superintendent and Contractor shall take reasonable steps to obtain the consent of Contractor's insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse of or reduction of such insurance. Such occupancy or use by Superintendent shall relieve Contractor of (and Superintendent shall assume) the responsibility for injury or damage to said occupied or used portions of the Project resulting from use by Superintendent or the public or from the action of the elements or from any other cause, except injury or damage resulting from the operations, negligence or intentional acts of Contractor, any Subcontractors or materialmen of any tier, or their officers, employees or agents.

19. TERMINATION OF AGREEMENT

19.1 Termination for Breach.

- 19.1.1 If the Contractor refuses or fails to proceed with the construction of the Project or any separable part thereof with such diligence as will insure its completion within the time specified by this Construction Services Agreement or any extension thereof, or fails to Complete the Project within the Contract Time, or if the Contractor should be adjudged bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or the Contractor or any of its Subcontractors should violate any of the provisions of this Construction Services Agreement, the Superintendent may serve written notice upon the Contractor and its Surety of the Superintendent's intention to terminate this Construction Services Agreement. This notice of intent to terminate shall contain the reasons for such intention to terminate this Construction Services Agreement and a statement to that effect that the Contractor's right to perform work on the Project shall cease and terminate upon the expiration of ten (10) days unless such violations have ceased and arrangements satisfactory to the Superintendent have been made for correction of said violations.
- 19.1.2 In the event that the Superintendent serves such written notice of termination upon the Contractor and the Surety, the Surety shall have the right to take over and perform this Construction Services Agreement. If the Surety does not: (1) give the Superintendent written notice of Surety's intention to take over and commence performance of this Construction Services Agreement within fifteen (15) days of the Superintendent's service of said notice of intent to terminate upon Surety; and (2) actually commence performance of this Construction Services Agreement within thirty (30) days of the Superintendent's service of said notice upon Surety; then the Superintendent may take over the Project and prosecute the same to completion by separate contract(s) or by any other method it may deem advisable for the account and at the expense of the Contractor.
- 19.1.3 In the event that the Superintendent elects to obtain an alternative performance of the Construction Services Agreement as specified above: (1) the Superintendent may, without liability for so doing, take possession of and utilize in completion of the Project such materials, appliances, plants and other property belonging to the Contractor that are on the site and reasonably necessary for such completion; and (2) Surety shall be liable to the Superintendent for any cost or other damage to the Superintendent necessitated by the Superintendent securing an alternate performance pursuant to this Article.

19.2 Termination for Convenience.

- 19.2.1 The Superintendent may terminate performance of the Project called for by the Contract Documents in whole or, from time to time, in part, if the Superintendent determines that a termination is in the Superintendent's interest.
- 19.2.2 The Superintendent shall terminate all or any part of the Project upon delivery to the Contractor of a "Notice of Termination" specifying that the termination is for the convenience of the Superintendent, the extent of termination, and the effective date of such termination.
- 19.2.3 After receipt of Notice of Termination, and except as directed by the Superintendent's Representative, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:

1. Stop Work as specified in the Notice of Termination.
2. Complete any work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.
3. Leave the Property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Documents is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.
4. Terminate all subcontracts to the extent that they relate to the portions of the work terminated.
5. Place no further subcontracts or orders, except as necessary to complete the continued portion of the Construction Services Agreement.
6. Submit to the Superintendent's Representative, within ten (10) days from the Project termination date found in the Notice of Termination, all of the usual documentation called for by the Contract Documents to substantiate all costs incurred by the Contractor for labor, materials and equipment through the Project termination date, including termination costs related to demobilizing and closing out the Project, found in the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of the Superintendent's exercise of its right to terminate this Construction Services Agreement pursuant to this clause, which costs the Contractor is authorized under the Construction Services Agreement to incur, shall: (i) be submitted to and received by the Superintendent no later than thirty (30) days after the Project termination date found in the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs occasioned by the Superintendent's Termination for Convenience."

19.2.4 Termination of the Construction Services Agreement shall not relieve the Surety of its obligation for any just claims arising out of or relating to the work performed on the Project.

19.2.5 In the event that the Superintendent exercises its right to terminate this Construction Services Agreement pursuant to this clause, the Superintendent shall pay the Contractor, upon the Contractor's submission of the documentation required by this provision, and other applicable provisions of the Construction Services Agreement the following amounts not already paid to Contractor:

1. All actual costs incurred according to the provisions of this Construction Services Agreement including but not limited to insurance costs incurred in connection with the Project.
2. A reasonable allowance for profit on the cost of the work on the Project performed and not otherwise paid for the Superintendent, provided Contractor establishes to the satisfaction of the Superintendent, that it is reasonably probable that the Contractor would have made a profit had the Construction Services Agreement been completed and provided further, that the profit allowed shall in no event exceed five percent (5%) of costs. In no event shall the total amount exceed GMP.

3. A reasonable allowance for Contractor's administrative costs in determining the amount payable due to termination of the Construction Services Agreement under this Article.

- 19.3 Termination of Agreement by Contractor. The Contractor may terminate the Construction Services Agreement upon ten (10) days written notice to the Superintendent, whenever: (1) there is a substantial failure of performance on the part of the Superintendent; or (2) the Superintendent shall elect not to appropriate funds and/or not to make two (2) successive Sublease Prepayments (if exercised by the Superintendent in its sole discretion) following the receipt by Superintendent of a request from the Contractor in its capacity as Lessor for each such Sublease Prepayment pursuant to Article 21 of the Sublease. In the event of such termination, the Contractor shall have no claims against the Superintendent except for payment for the value of the work performed on the Project as of the date of termination.
- 19.4 Assignment of Subcontractors and Suppliers. If the Contract is Terminated, Contractor shall provide Superintendent copies of all subcontracts, purchase orders, addenda, invoices, payment records, and Project files associated with each Subcontractor and Material Supplier. The Superintendent shall have the option to assume any Subcontracts, contracts or purchase orders the Superintendent chooses. To the extent that vendors are not paid in full for the labor, materials, or services provided, Contractor shall provide an accounting statement showing the amounts paid and the amounts due to the Subcontractor and a statement on the anticipated payment status associated with the Termination.
- 19.5 Continuation of Work During Disputes. In the event of a dispute between the parties as to performance of the work or the interpretation of this contract, or payment dispute, the parties shall attempt to resolve the dispute. Pending resolution of this dispute, Contractor agrees to continue the work diligently to completion and shall neither rescind nor terminate the agreement.

20. RESOLUTION OF AGREEMENT CLAIMS

- 20.1 Decision of Architect. "Disputes" and "Claims" are as defined herein and in Article 20.9.1.1. Any Dispute between Superintendent and Contractor involving money or time, including those alleging an error or omission by the Architect shall be referred initially to the Architect for action as provided in Article 20.2 within ten (10) days after any Contractor's Article 17 request for extra work/modification is denied or within ten (10) days after any Contractor knew or should have known a Dispute existed, whichever is earlier. Any Disputes or Claims submitted by the Contractor after a request for Retention Payment or when Retention Payment can be released to the Contractor shall be deemed waived and void. If there is a CM, the CM shall receive the Dispute and may review and also assemble opinions and documents to assist the Architect. A decision by the Architect, as provided in Article 20.5, shall be required as a condition precedent to proceeding with remedies set forth in Article 20.9 as to all such matters arising prior to the date Retention Payment Application is due, regardless of whether such matters relate to execution and progress of the Work, or the extent to which the Work has reached Final Completion.

The condition precedent of an Architect decision shall be waived if: (1) the position of Architect is vacant; (2) the Architect has failed to take action required under Article 20.5 within the time periods required therein; or (3) the Dispute or Claim relates to a stop notice claim not arising from any extra Change Order or Immediate Change Directive for which approval has not been provided. Any notice of a Dispute or Claim must be a separate and discreet document. References to meeting minutes, RFI's, or other communications during construction of the Project do not comply with the Dispute or Claim notice requirements.

- 20.2 Architect's Review. As a condition precedent and prior to the Architect's review of the Dispute, the Contractor must submit all required documents and information to fully substantiate the Dispute so that the Architect can make an informed decision. The Architect (and CM) will review the Dispute and take one or more of the following preliminary actions upon receipt of a Dispute: (1)

request additional supporting data from the claimant; (2) submit a schedule to the parties indicating when the Architect expects to take action; (3) reject the Dispute in whole or in part, stating reasons for rejection; (4) recommend approval of the Dispute; or (5) suggest a compromise. The Architect may also, but is not obligated to, notify the Surety, if any, of the nature and amount of the Dispute.

- 20.2.1 *Architectural Immunity.* Architect review of Disputes and Claims shall be impartial and meant to resolve Disputes and Claims. Pursuant to the case, Huber, Hunt & Nichols, Inc. v. Moore (1977) 67 Cal.App.3d 278, the Architect is provided quasi-judicial immunity for interpreting and deciding Disputes and Claims between the Superintendent and Contractor.
- 20.3 Documentation if Resolved. If a Dispute has been resolved, the Architect (and/or CM) will prepare a Change Order or obtain appropriate documentation to document the terms for Board approval.
- 20.4 Actions if Not Resolved. If a Dispute has not been resolved and all documentation requested pursuant to Article 20.2 has been provided, the Contractor shall, within ten (10) days after the Architect's initial response, assemble any additional documents involved in the Dispute including copies of all back-up documentation of costs and the basis for the Dispute and take one or more of the following actions: (1) modify the initial Dispute; (2) notify the Architect that the initial Dispute stands; or (3) supplement with additional supporting data and re-submit to the Architect under Article 20.2.
- 20.5 Architect's Written Decision. If a Dispute has not been resolved after consideration of the foregoing and of other evidence presented by the parties or requested by the Architect, the Architect (or Architect through CM) shall provide a written decision twenty (20) days after Contractor's compliance with Article 20.4. Upon expiration of such time period, the Architect (or Architect through CM) will render to the parties its written decision relative to the Dispute, including any change in the Contract Sum or Contract Time or both. The Architect may also request reasonable additional time to complete Architect's written decision.
- If the resolution of the Dispute by the Architect is not satisfactory to the Contractor and copies of all back-up documentation of costs and the basis for the Dispute has been fully articulated in a package of material that is complete, the Contractor may then submit a Claim to the Superintendent under Article 20.9. Any decision or response by the Architect regarding a Dispute or Claim may be provided through the CM. Should Contractor fail to timely pursue a Claim under Article 20.9, any and all deadlines or time limitations provided for by statute or this Contract shall start running without tolling at the time the Dispute is denied or deemed rejected.
- 20.6 Continuing Contract Performance. Pending final resolution of any Dispute or Claim, including, negotiation, mediation, arbitration, or litigation, the Contractor shall proceed diligently with performance of the Contract, and the Superintendent shall continue to make any undisputed payments in accordance with the Contract (less any withholdings or offsets). If the Claim is not resolved, Contractor agrees it will neither rescind the Contract nor stop the progress of the work, but Contractor's sole remedy shall be to submit such controversy to determination by a court of competent jurisdiction in the Superintendent where the Project is located, after the Project has been completed, and not before.
- 20.6.1 *Superintendent's Option to Submit Individual Disputes or Claims to Arbitration during Claims and Disputes Process.* At the Superintendent's sole option, in order to more efficiently resolve Disputes or Claims during the Project at any time prior to the completion of the Dispute or Claims process, and pursuant to Public Contract section 9201, the Superintendent may submit individual Disputes or Claims for binding arbitration and Contractor agrees to the resolution of each individual Dispute or Claim by an Arbitrator, including resolution of disputed time and delays. If binding arbitration is utilized by the Superintendent for individual Disputes or Claims, such resolution is full and final as to that particular Dispute or Claim. THIS INDIVIDUAL DISPUTE

ARBITRATION PROCESS IS NOT A CONTRACT ARBITRATION CLAUSE AND SHALL NOT BE CONSTRUED AS AN AGREEMENT TO ARBITRATE. THIS INDIVIDUAL ARBITRATION PROCESS, IF EXERCISED BY THE SUPERINTENDENT, IS FOR THE SOLE PURPOSE OF STREAMLINING AND RESOLVING DISPUTES OR CLAIMS DURING CONSTRUCTION AND MAY BE REQUESTED ON SPECIFIC INDIVIDUAL ITEMS BY THE SUPERINTENDENT AT ANY TIME PRIOR TO RETENTION PAYMENT (EVEN IF THERE ARE DEDUCTIONS MADE FROM RETENTION PAYMENT) WHICH REPRESENTS THE FINAL COMPLETION OF THE PROJECT. If the Superintendent elects to submit an individual Dispute or Claim to arbitration, the following shall apply:

- 20.6.1.1 At the Superintendent's sole option, the Superintendent may initiate arbitration with either the American Arbitration Association or JAMS. The arbitration shall proceed in accordance with the rules of the chosen organization applicable to construction disputes, subject to the modifications below.
- 20.6.1.2 For a Dispute or Claim involving less than \$25,000, the parties agree to waive live testimony and an oral hearing and submit the Dispute or Claim to the Arbitrator on written submissions and other evidence the Arbitrator may deem appropriate. There shall be no discovery and Contractor's evidence shall be limited to the documentation it previously provided to the Superintendent and Architect in support of its Dispute or Claim.
- 20.6.1.3 For a Dispute or Claim involving \$25,000 or more, subject to the approval of the Arbitrator, the parties may propose or agree to any alternative arbitration procedures designed to resolve the Dispute or Claim more efficiently. Because the Contractor's evidence is limited to those documents and other supporting materials the Contractor previously submitted to the Superintendent and Architect in support of its Dispute or Claim, it is anticipated that no written discovery will be necessary.
- 20.6.1.4 Venue for the arbitration shall be at the Arbitrator's office closest to the Project site. The parties may agree to a different location subject to the approval of the Arbitrator.
- 20.6.1.5 The arbitration fees shall be shared equally by the parties. Each side shall bear its own attorney's fees and other costs it incurs.
- 20.6.1.6 The parties agree that the Arbitrator shall provide a reasoned award in an appropriate level of detail for the particular Dispute or Claim. The award shall be the final and binding decision as to all issues and costs arising out of the Dispute or Claim. The Superintendent shall pay any amount awarded to the Contractor as provided for in Public Contract Code section 9204. The Superintendent may deduct any amount awarded against the Contractor from any progress payment or the Retention Payment. In the event that payment is not made in accordance with this provision, judgment on the award may be entered in any court having jurisdiction, but not before Final Completion of the Project.
- 20.6.1.7 No Tolling. Any arbitration conducted under this provision as to any Dispute or Claim shall not relieve the Contractor of complying with the Dispute and Claim requirements in this Contract, in the Public Contract

Code, or the Government Code, as to other Disputes or Claims for which the Superintendent has not elected to initiate arbitration.

20.7 Claims for Concealed Trenches or Excavations Greater Than Four Feet Below the Surface. When any excavation or trenching extends greater than four feet below the surface:

20.7.1 *Immediately upon discovery*, The Contractor shall promptly, and before the following conditions are disturbed, notify the Superintendent, by telephone and in writing of any:

20.7.1.1 Subsurface or latent physical conditions at the Site differing from those indicated in the Drawings, Specifications, or pursuant to the documents and information from Contractor's Due Diligence or Due Diligence Documents.

20.7.1.2 Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract.

20.7.1.3 Hazardous waste condition, except, if Contractor's Work includes removal or disposal of hazardous substances, or is part of Contractor's Due Diligence or Due Diligence Documents. Material that the Contractor believes may be a material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law. In such case, the notice procedures and requirements of Article 17.5.2 shall apply.

20.7.2 *The Superintendent shall investigate the conditions*, and if Superintendent finds that the conditions do materially so differ, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work shall issue a change order or Construction Change Document under the procedures described in the Contract.

20.7.3 *In the event that a dispute arises* between a public entity or Superintendent and the Contractor whether the conditions materially differ, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled Completion Date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

20.8 Dispute Concerning Extension of Time. If Contractor and Superintendent cannot agree upon an extension of time, whether compensable or not, then Contractor must have first completed the procedures set forth in Article 18. Upon completion of the procedures set forth under Article 18, Contractor must then comply with the requirements in this Article including those set forth under Article 20.9.

20.9 Claims Procedures. Pursuant to the procedures under Public Contract Code sections 9204 *et seq.*, 20104 *et seq.*, and Government Code section 930.2, Contractor, through execution of this Contract, agrees to comply with the Claims requirements of this Article 20 to quickly and efficiently resolve disputes. These requirements are intended as "reasonable . . . claim and dispute resolution procedures and requirements," as permitted by Public Contract Code section 9204 (f) and not intended "to conflict with or otherwise impair the timeframes and procedures," therein. Further, to provide a level of accuracy to the records submitted, the Superintendent shall have the right to audit books and records pursuant to Article 21 to confirm the actual costs incurred and to reduce the uncertainty in resolving disputes with limited information. The Claims procedures herein are

intended to supplement, clarify, and harmonize the above Public Contract Code claim requirements and to ensure that all work performed on the Project as to which there is no dispute is paid for in full in a timely manner and to ensure that all disputes are resolved in an efficient and reasonable manner.

20.9.1 *Procedure Applicable to all Claims*

20.9.1.1 Definition of Claim: A “Claim” shall have the same meaning as in Public Contract Code sections 9204 and 20104, including the requirements of Section 9204 (c)(1) to submit a Claim to the Superintendent by registered or certified mail. In addition, a Claim shall include a dispute involving any withholding the Superintendent makes or has provided notice to the Contractor that it intends to make from any payment that would otherwise be due to the Contractor. Before any Dispute rises to the level of a Claim, the Contractor shall have complied with the applicable provisions of Articles 20.1 to 20.8, , including the requirement to assemble and submit Supporting Documentation as defined below. In accordance with the provisions of Sections 9204 and 20104, a Claim is a separate and distinct demand and Contractor shall not submit a Claim that involves multiple Disputes, but each rejected Dispute shall be submitted as a separate Claim. If the Claim is for damages associated with a DSA Stop Work Order, Contractor shall not be entitled to compensation, but shall be entitled to utilize Governmental Delay Float (See Article 9.2.1.) Contractor agrees that the Dispute and Claims process set forth in this Article 20 fully complies with all applicable requirements in Public Contract Code sections 9204 and 20104 et seq. The submission of a claim pursuant to Government Code section 910 et seq. does not qualify as a submission of a Dispute or Claim in compliance with Article 20.

20.9.1.2 Filing Claim Is Not Basis to Discontinue Work: The Contractor shall promptly comply with Work under the Contract or Work requested by the Superintendent even though a written Claim has been filed. The Contractor and the Superintendent shall make good faith efforts to resolve any and all Claims that may arise during the performance of the Work covered by this Contract.

20.9.1.3 Supporting Documentation: “Supporting Documentation” means all required documentation for the Superintendent to make an informed decision regarding a Claim. Contractor agrees that Supporting Documentation is required to meet the Contractor’s requirement to provide “reasonable documentation” as required in Public Contract Code section 9204 (d)(1)(B) and to provide “documents necessary to substantiate the claim” as required in Public Contract Code section 20104.2 (a). Supporting Documentation shall also include, without limitation: arguments, justifications, cost, estimates, Baseline and Construction Schedule analysis and detailed documentation. Contractor agrees that in order to facilitate an efficient and reasonable resolution of Claims, Contractor agrees to provide all Supporting Documentation along with the following which shall also be deemed included in the definition of “Supporting Documentation”:

- a. Cover letter that includes, at a minimum:

1. A summary of factual basis, including a narrative, of the Claim and amount of Claim.
 2. A summary of the basis of the Claim, including the specific clause and section under the Contract under which the Claim is made.
- b. Documents relating to the Claim, including, but not limited to:
1. Specifications sections in question.
 2. Relevant portions of the Drawings.
 3. Applicable Clarifications (RFI's).
 4. Other relevant information, including responses that were received.
 5. Contractor Analysis of Claim merit.
 6. Contractor's analysis of any Subcontractor vendor Claims that are being passed through.
 7. Any analysis performed by outside consultants.
 8. Any legal analysis that Contractor deems relevant.
- c. Itemized breakdown of all costs associated with the Claim.
- d. For Claims relating to time extensions, an analysis and supporting documentation evidencing any effect upon the critical path in conformance with the requirements of Article 9 and chronology of events and related correspondence.
- e. Applicable Daily Reports and logs--If the Daily Reports or Logs are not available, lost, or destroyed, there shall be a presumption that the lost documentation was unfavorable to Contractor. See California Civil Jury Instruction 204.
- f. For Claims involving overhead, cost escalation, acceleration, disruption or increased costs, a full version of job costs reports organized by category of work or Schedule of Values with budget information tracked against actual costs. Any and all supporting back-up data, including the original proposal documents used to submit the proposal, costs, and GMP to the Superintendent and associated original unaltered metadata (collectively, "LLB Proposal").
1. The original LLB Proposal documentation should remain intact and available for review and inspection in case of this type of increased cost Claim.

2. This data on the LLB Proposal shall be made available to any Superintendent attorneys or experts and shall also be utilized as evidence for any legal proceedings.
 3. If the LLB Proposal documentation is not available, lost or destroyed, there shall be a presumption that the lost LLB Proposal documentation was unfavorable to Contractor. See California Civil Jury Instruction 204.
- g. Certification: Contractor (and Subcontractors, if applicable) shall submit with the Claim a certification under penalty of perjury:
1. That Contractor has reviewed the Claim and that such Claim is made in good faith;
 2. Supporting data are accurate and complete to the best of Contractor's knowledge and belief;
 3. The amount requested accurately reflects the amount of compensation for which Contractor believes the Superintendent is liable; and
 4. That Contractor is familiar with Government Code sections 12650 et seq. and Penal Code section 72 and that false claims can lead to substantial fines and/or imprisonment.
- h. Signature of Certification: If Contractor is not an individual, the certification shall be executed by an officer or general partner of Contractor having overall responsibility for the conduct of Contractor's affairs.

20.9.1.4 Formal Claim Notification: The Contractor shall not later than seven (7) calendar days after the final written decision of the Architect regarding a Dispute, or if the time period for Architect's decision has passed under Article 20.5 without a decision, submit a Formal Claim Notification in writing sent by registered mail or certified mail with return receipt requested, to the Superintendent, attention to the Superintendent's Director Facilities Planning and Construction (and, if there is one, the Superintendent's CM) stating clearly the basis for the Claim and including all Supporting Documentation as above. If the Formal Claim Notification is not submitted within seven (7) days after the written decision of the Architect regarding the Dispute or the passage of time under Article 20.5, the Contractor shall be deemed to have waived all right to assert the Claim, and the Claim shall be deemed rejected in its entirety, and any and all deadlines or time limitations provided for by statute or this Contract shall start running without tolling and without further action from the Superintendent. The Superintendent's failure to respond within forty-five (45) days of receipt of a Formal Claim Notification shall be considered a denial of the Claim asserted in the Formal Claim Notification and any deadlines or time limitations provided for by statute or this Contract shall start running without tolling. References to meeting minutes, RFI's, or other communications during construction of the Project do not comply with the Formal Claim

Notification requirements. The Formal Claim Notification must be presented as follows:

- a. The term "Formal Claim Notification" must be written at the top of the page in no smaller than 20-point font size.
- b. Declaration that the Contractor has reviewed the Claim and that such Claim is made in good faith.
- c. All Supporting Documentation as defined and required above must be submitted with the Formal Claim Notification along with a declaration that all Supporting Documentation is accurate and complete.
- d. The amount requested accurately reflects the amount of compensation for which the Contractor believes the Superintendent is liable.
- e. Appropriate organization of all Supporting Documentation. Supporting Documentation greater than 25 pages in length shall be organized in logical sections and separated with numbered or lettered dividers. Summaries and narratives shall reference these sections as applicable. A stack of documents, a copy of all Project documents, or the submission of random documents shall not constitute compliance with the requirement to provide all Supporting Documentation.
- f. The Contractor is familiar with Government Code sections 12650 et seq. and Penal Code section 72 and that false claims can lead to substantial fines and/or imprisonment.

20.9.1.5 Upon receipt of a proper Claim and all Supporting Documentation as required above, the Superintendent shall conduct a reasonable review of the Claim. The Superintendent may also request additional documentation. The parties may also agree in writing to mutually extend any time periods set forth below

20.9.1.6 **Response to Claim (Additional Documentation is NOT Requested):** If the Superintendent does not request additional documentation within thirty (30) days of receipt of a proper Claim and all Supporting Documentation, the Superintendent shall provide a written response to the Claim within forty-five (45) days of the Contractor's submission of the Claim. The response may deny the Claim, allow the Claim in part, or allow the Claim in whole. The Superintendent's response under this provision shall be deemed the responses required pursuant to Public Contract Code sections 9204 (d)(1)(A) and 20104.2 (b)(3) or 2014.2 (c)(3). If the Superintendent fails to respond in writing within the forty-five (45) days, the Claim shall be deemed rejected in its entirety, and any and all deadlines or time limitations provided for by statute or this Contract shall start running without tolling and without further action from the Superintendent. If the Contractor disagrees with the Superintendent's written decision or the Superintendent's decision to allow the Claim to be rejected in its entirety by expiration of the forty-five (45) days, within fifteen (15) days thereof, the Contractor must submit a written demand, sent by registered or certified mail, return receipt requested, for a meet and confer conference pursuant to Public

Contract Code sections 9204 (d)(2)(A) and 20104.2 (d). The provisions set forth in Article 20.9.1.8 below shall apply to the demand for a meet and confer conference under this paragraph. Failure to timely submit a request for a meet and confer shall not toll any applicable deadlines or time limitations provided for by statute or this Contract.

20.9.1.7

Response to Claim (Additional Documentation is Requested): In accordance with the provisions of Public Contract Code section 20104.2, within thirty (30) days of receipt of a proper Claim and all Supporting Documentation, the Superintendent, or Superintendent through the Construction Manager or Superintendent's agent or attorney, may request in writing any additional documentation the Superintendent finds reasonably necessary to make a determination of the Claim's merit. If the Superintendent makes a request for additional documentation, the following shall apply:

- a. Within five (5) calendar days of the Superintendent's request, the Contractor shall inform the Superintendent in writing whether the Contractor will provide the additional documentation and provide a date certain by which the Contractor will provide the additional documentation. If the Contractor agrees to submit the additional documentation, the time within which the Superintendent must respond under Public Contract Code sections 9204 (d)(1)(A) and 20104.2 (b)(1) or 2014.2 (c)(1), as applicable, shall not start to run until the Contractor submits and the Superintendent receives the additional documentation.
- b. If the Contractor provides the requested additional documentation, the Superintendent shall provide a written response to the Claim as follows: 1) for Claims less than \$50,000: within fifteen (15) days of receipt of the additional documentation, or within a period of time no greater than that taken by the Contractor in producing the requested additional documentation, whichever is greater; 2) for Claims between \$50,000 and \$375,000, inclusive: within thirty (30) days of receipt of the additional documentation, or within a period of time no greater than that taken by the Contractor in producing the requested additional documentation, whichever is greater; or 3) for Claims over \$375,000: within forty-five (45) days of receipt of the additional documentation. The Superintendent's response under this provision shall be deemed the responses required pursuant to Public Contract Code sections 9204 (d)(1)(A) and 20104.2 (b)(3) or 2014.2 (c)(3).
- c. If the Contractor denies the Superintendent's request for additional documentation, fails to respond to the Superintendent's request for additional documents within five (5) calendar days, or fails to provide the additional documentation as requested, the Claim shall be deemed rejected in its entirety as of the date certain represented by the Contractor based upon the grounds that the Contractor's failure to timely and adequately substantiate its Claim, and any and all deadlines or time limitations provided for by statute or this Agreement shall start running without tolling and without further action from the Superintendent. Notwithstanding

Contractor's failure to respond or submit the additional documentation as requested and required, pursuant to Public Contract Code section 9204 (d)(1)(A), the Superintendent may, in its sole discretion, approve any portion of the Claim it deems to have merit based on the information available to the Superintendent. In the event the Superintendent deems some portion of the Claim to have merit, the Superintendent will notify the Contractor and payment will be made within 60 days of such notification in accordance with the provisions of Public Contract Code section 9204.

- d. If the Contractor disagrees with the Superintendent's written decision or the Superintendent's decision to reject the Claim in its entirety as allowed above, the Contractor must submit a written demand, sent by registered or certified mail, return receipt requested, for a meet and confer conference pursuant to Public Contract Code sections 9204 (d)(2)(A) and 20104.2 (d). The provisions set forth in Article 20.9.1.8 below shall apply to the demand for a meet and confer conference under this paragraph. Failure to timely submit a request for a meet and confer shall not toll any applicable deadlines or time limitations provided for by statute or this Agreement.

20.9.1.8 Demand for Meet and Confer Conference: The following shall apply to all demands for a meet and confer conference under Public Contract Code section 9204 or Public Contract Code section 20104 *et seq.*:

- a. The meet and confer demand for shall be sent to the Superintendent's Director Facilities Planning and Construction. The written demand must be entitled "Demand for Meet and Confer Conference Pursuant to Public Contract Code Requirements" at the top of the demand, in no less than 20-point font size. Upon receipt of the demand, the Superintendent shall promptly schedule the informal conference so that it takes place within thirty (30) days of receipt of the Contractor's meet and confer demand.
- b. Notwithstanding the fact that both Public Contract Code section 9204 and Public Contract Code section 20104 *et seq.* may apply to a particular Claim, only one such demand for a meet and confer conference shall be required. Further, the Contractor and the Superintendent need only participate in one meet and confer conference for each Claim. However, subject to the sole discretion of the Superintendent, the settlement of multiple Claims may be attempted at any informal meet and confer conference.

20.9.1.9 As provided for in Public Contract Code section 9204 (d)(2)(B), within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the Superintendent will provide Contractor a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after the Superintendent issues its written statement. If the Superintendent fails to issue a written statement, 4.6.9.1 paragraph o below shall apply.

- 20.9.1.10 If the Superintendent needs approval from its governing Board to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the Claim, and the governing Board does not meet within the required number of days for the Superintendent to respond to the Claim as noted above, or within the mutually agreed to extension of time, following receipt of a Claim sent by registered mail or certified mail, return receipt requested, the Superintendent shall have up to three days following the next duly publicly noticed meeting of the governing Board after the required number of days for the Superintendent to respond to the Claim as set forth above, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the Claim.
- 20.9.1.11 Any disputed portion of the Claim, as identified by the Contractor in writing after the required meet and confer conference, shall be submitted to nonbinding mediation, with the Superintendent and the Contractor sharing the associated costs equally. The Superintendent and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the Claim remaining in dispute shall be subject to applicable procedures in Article 20.10.
- 20.9.1.12 For purposes of this Article, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.
- 20.9.1.13 Unless otherwise agreed to by the Superintendent and the Contractor in writing, the mediation conducted pursuant to this Article shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.
- 20.9.1.14 This Claims process does not preclude the Superintendent from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this Article does not resolve the Claim. This Claims process does not preclude the Superintendent from submitting individual Disputes or Claims to binding arbitration pursuant to Article 20.6.1.
- 20.9.1.15 Failure by the Superintendent to respond to a Claim from the Contractor within the time periods described in this Article or to otherwise meet the time requirements of this Article shall result in the claim being deemed rejected in its entirety, and any and all deadlines or time limitations provided for by statute or this Agreement shall start running without tolling and without further action from the Superintendent. A Claim that is denied by reason of the Superintendent's failure to have timely responded to a Claim, or its failure to otherwise meet the time requirements of this Article, shall not constitute an adverse finding with

regard to the merits of the Claim or the responsibility or qualifications of the Contractor.

- 20.9.1.16 If a subcontractor or a lower tier subcontractor lacks legal standing to assert a Dispute or Claim against the Superintendent because privity of contract does not exist, the Contractor may present to the Superintendent a Dispute or Claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the Contractor present a Dispute or Claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the Dispute or Claim be presented to the Superintendent shall furnish all required Supporting Documentation to support the Dispute or Claim. Within 45 days of receipt of this written request, the Contractor shall notify the subcontractor in writing as to whether the Contractor presented the Dispute or Claim to the Superintendent and, if the Contractor did not present the Dispute or Claim, provide the subcontractor with a statement of the reasons for not having done so. Any Dispute or Claim by any subcontractor is subject to the requirements of this Article 20.
- 20.9.1.17 Upon receipt of a Claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable.
- 20.9.1.18 The Contractor's Dispute or Claim shall be denied if it fails to fully comply with the requirements of this Article 20.
- 20.10 Claims Procedures in Addition to Government Code Claim. Nothing in the Claims procedures set forth in Article 20 of the CSA shall act to waive or relieve the Contractor from meeting the requirements set forth in Government Code section 900 *et seq.*
- 20.11 Binding Arbitration of Individual Claim Issues. To expedite resolution of Claims pursuant to Public Contract Code section 9201, at the Superintendent's sole option, the Superintendent may submit individual Claims to Arbitration prior to Retention Payment consistent with the requirements of Article 20.6.1.
- 20.12 Resolution of Claims in Court of Competent Jurisdiction. If Claims are not resolved under the procedure set forth and pursuant to Article 20.9, such Claim or controversy shall be submitted to a court in the Superintendent of the location of the Project after the Project has been completed, and not before.
- 20.13 Warranties, Guarantees and Obligations. The duties and obligations imposed by this CSA and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon Contractor by the Contract Documents and amendments thereto; and all of the rights and remedies available to Superintendent and Architect thereunder, are in addition to, and are not to be construed in any way as a limitation of any rights and remedies available to any or all of them which are otherwise imposed or available by laws or regulations by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this Article will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

21. MAINTENANCE OF RECORDS; AUDIT/OWNERSHIP OF DOCUMENTS

- 21.1 State Audit. Pursuant to and in accordance with the provisions of Government Code § 10532, or any amendments thereto, all books, records, and files of the Superintendent, the Contractor, or any Subcontractor connected with the performance of this Contract involving the expenditure of state funds in excess of Ten Thousand Dollars (\$10,000.00), including, but not limited to, the administration thereof, shall be subject to the examination and audit of the Office of the Auditor General of the State of California for a period of five (5) years after Retention Payment is made or a Notice of Completion is Recorded, whichever occurs first. Contractor shall preserve and cause to be preserved such books, records, hard drives, electronic media, and files for the audit period.
- 21.2 Superintendent Audit. Pursuant to the remedies under Public Contract Code section 9201 and Government Code section 930.2, Contractor, through execution of this Agreement, also agrees the Superintendent shall have the right to review and audit, upon reasonable notice, the books and records of the Contractor concerning any monies associated with the Project. The purpose of this Audit is to quickly and efficiently resolve disputes based on the actual costs incurred and to reduce the uncertainty in resolving disputes with limited information. The Superintendent shall perform any audits at its own cost and any such audit shall be performed by an independent auditor, having no direct or indirect relationship with the functions or activities being audited or with the business conducted by the Contractor or Superintendent. In the event the independent auditor determines that Change Orders, Response to Request for Proposals, Claims, Appeal of Claims, or other requests for payment the Auditor shall report the results of the Audit findings to the Superintendent and provide a copy to the Contractor after giving the Superintendent Board the opportunity for at least 10 days review. If the Contractor disputes the findings of the independent auditor, such dispute shall be handled in the manner set forth under Article 20 entitled Disputes.
- 21.3 Failure to Produce Books or Records. If Contractor having agreed to the terms of this Contract fails to produce books or records requested by Auditor, such failure to produce books or records that were required to be preserved for audit, it shall be presumed that the information contained in the withheld books or records were unfavorable to the Contractor and the Auditor shall note this refusal in the results of the Audit findings for further evaluation by the Superintendent and the Superintendent's Board. The refusal to release records that are concerning monies associated with the Project may be used as a grounds to Debar the Contractor from future Projects for failure to preserve records under this Article and the failure to produce required audit records may also be used as a grounds for a negative finding against the Contractor depending on the significance of the records that are withheld by Contractor. Failure to produce Job Cost Data tied to Job cost categories and budgets shall be presumed an intentional failure to produce key audit records. Similarly, failure to produce daily time records (prepared at or near the time of the Work actually took place shall be presumed an intentional failure to produce key audited records.
- 21.4 Inefficiency, Acceleration or Delay Claims. If Contractor is seeking costs for inefficiency, home office overhead, or unanticipated increased costs due to delays or acceleration, Contractor shall also produce copies of the original LLB Proposal or cost tabulation utilized in submitting Contractor's cost for the Project. The LLB Proposal information and cost tabulation can be used in litigation, arbitration, evaluation of Claims or Disputes, Audit, and trial. If the records for the LLB Proposal or cost tabulation are kept on a computer, the Contractor shall also produce all metadata (in native format) that accompanies the LLB Proposal or cost tabulation for inspection to prove the authenticity of the underlying LLB Proposal or cost tabulation. Failure to produce the LLB Proposal or cost tabulation for review of inefficiency, home office overhead, or unanticipated increased costs due to delays or accelerations shall be considered material evidence that the LLB Proposal or cost tabulation was not favorable to the Contractor. This evidence shall be entered as a jury instruction for trial that the LLB Proposal or cost tabulation was not produced and the LLB Proposal or cost tabulation information was unfavorable to the Contractor. The evidence may also be used in Debarment Proceedings, and noted as an exception to an Audit Findings.

- 21.5 Upon notification of Contractor concerning the results of the audit and a reasonable time has passed for Contractor to respond to Audit Findings and if either there is no Dispute of the Audit findings under this Article or if the result after utilizing the Disputes Clause confirms the Audit findings, the Superintendent may seek any Savings that have not been accounted for with Superintendent and may also seek reimbursement for overstated Claims, Change Orders, or Appeal of Claims.
- 21.6 Ownership of Drawings. Notwithstanding any provision of this Agreement, all drawings, specifications, and copies thereof furnished by Superintendent are its property. They are not to be used on other work and with exception of signed contract sets, are to be returned to Superintendent on request at completion of work.

22. PREVAILING RATES OF WAGES; RECORDS, APPRENTICES

- 22.1 Wage Rates. Pursuant to the provisions of Article 2 (commencing at § 1720), Chapter 1, Part 7, Division 2, of the Labor Code, the Superintendent has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public works project is to be performed for each craft, classification, or type of worker needed for this Project from the Director of the Department of Industrial Relations ("Director"). These rates are on file at the administrative office of the Superintendent and are also available from the Director of the Department of Industrial Relations. Copies will be made available to any interested party on request. The Contractor shall post a copy of such wage rates at appropriate, conspicuous, weatherproof points at the Site.

Any worker employed to perform Work on the Project, but such Work is not covered by any classification listed in the published general prevailing wage rate determinations or per diem wages determined by the Director of the Department of Industrial Relations, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to the employment of such person in such classification.

- 22.2 Holiday and Overtime Pay. Holiday and overtime work, when permitted by law, shall be paid for at the rate set forth in the prevailing wage rate determinations issued by the Director of the Department of Industrial Relations or at least one and one-half (1½) times the specified basic rate of per diem wages, plus employer payments, unless otherwise specified in the Contract Documents or authorized by law
- 22.3 Wage Rates Not Affected by Subcontracts. The Contractor shall pay and shall cause to be paid each worker engaged in the execution of the Work on the Project not less than the general prevailing rate of per diem wages determined by the Director, regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractor and such workers.
- 22.4 Per Diem Wages. The Contractor shall pay and shall cause to be paid to each worker needed to execute the Work on the Project per diem wages including, but not limited to, employer payments for health and welfare, pensions, vacation, travel time and subsistence pay as provided for in Labor Code §1773.1.
- 22.5 Forfeiture and Payments. Pursuant to Labor Code §1775, the Contractor shall forfeit to the Superintendent, not more than Two Hundred Dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing wages rates as determined by the Director of the Department of Industrial Relations, for the work or craft in which the worker is employed for any Work done under the Agreement by the Contractor or by any Subcontractor under it. The amount of the penalty shall be determined by the Labor Commissioner and shall be based on consideration of: (1) whether the Contractor or Subcontractor's failure to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily correct upon being brought to the attention of the Contractor or Subcontractor; and (2) whether the Contractor or Subcontractor has a prior record of failing to meet its prevailing wage obligations.

23. RECORDS OF WAGES PAID

23.1 Payroll Records

- 23.1.1 Pursuant to §1776 of the Labor Code, each Contractor and Subcontractor shall keep an accurate payroll record showing the name, address, social security number, work classification and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by him or her in connection with the Project.
- 23.1.2 All payroll records shall be certified and submitted to the Superintendent with each application for payment, but not less than once per month or as otherwise requested by the Superintendent. All payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
- 23.1.3 A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
- 23.1.4 A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of Superintendent, the Division of Labor Standards Enforcement or the Division of Apprenticeship Standards of the Department of Industrial Relations.
- 23.1.5 A certified copy of all payroll records shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through the Superintendent, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to Paragraph (2) above, the requesting party shall, prior to being provided the records, reimburse the costs, according to law for the preparation by the Contractor, Subcontractor(s), and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor.
- 23.1.6 Unless required to be furnished directly to the Labor Commissioner in accordance with Labor Code section 1771.4, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division of Labor Standards Enforcement.
- 23.1.7 The Contractor or Subcontractor(s) shall file a certified copy of all payroll records with the entity that requested such records within 10 calendar days after receipt of a written request.
- 23.1.8 Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the Superintendent, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the Contract or the Subcontractor(s) performing the Contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided non-redacted copies of certified payroll records.

- 23.1.9 The Contractor shall inform the Superintendent of the location of all payroll records, including the street address, city and Superintendent, and shall, within five working days, provide a notice of a change of location and address.
- 23.1.10 The Contractor or Subcontractor(s) shall have ten (10) calendar days in which to comply subsequent to receipt of a written notice requesting payroll records. In the event that the Contractor or Subcontractor(s) fails to comply within the 10-day period, the Contractor or Subcontractor(s) shall, as a penalty to the Superintendent, forfeit One Hundred Dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from Progress Payments or Retention Payment then due.
- 23.1.11 Responsibility for compliance with this Article shall rest upon the Contractor.

23.2 Withholding of Payments & Penalties

- 23.2.1 The Superintendent may withhold or delay Progress Payments to the Contractor or a Sublease Payment or Retention if:
- 23.2.1.1 The required prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations is not paid to all workers employed on the Project; or
- 23.2.1.2 The Contractor or Subcontractor(s) fail to submit all required certified payroll records with each application for payment, but not less than once per month; or
- 23.2.1.3 The Contractor or Subcontractor(s) submit incomplete or inadequate payroll records; or
- 23.2.1.4 The Contractor or Subcontractor(s) fail to comply with the Labor Code requirements concerning apprentices; or
- 23.2.1.5 The Contractor or Subcontractor(s) fail to comply with any applicable state laws governing workers on public works projects.

24. APPRENTICES

- 24.1 Apprentice Wages and Definitions. All apprentices employed by the Contractor to perform services under the Contract shall be paid the standard wage paid to apprentices under the regulations of the craft or trade for which he or she is employed, and as determined by the Director of the Department of Industrial Relations, and shall be employed only at the craft or trade to which he or she is registered. Only apprentices, as defined in §3077 of the Labor Code, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprenticeship agreements under Chapter 4 (commencing with §3070) of Division 3, are eligible to be employed under this Contract. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training, or in accordance with the rules and regulations of the California Apprenticeship Council.
- 24.2 Employment of Apprentices. Contractor agrees to comply with the requirements of Labor Code §1777.5. The Contractor awarded the Project, or any Subcontractor under him or her, when performing any of the Work under the Contract or subcontract, employs workers in any apprenticeable craft or trade, the Contractor and Subcontractor shall employ apprentices in the ratio set forth in Labor Code §1777.5. The Contractor or any Subcontractor must apply to any

apprenticeship program in the craft or trade that can provide apprentices to the Project site for a certificate approving the contractor or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the Contractor or Subcontractor, shall arrange for the dispatch of apprentices to the Contractor or Subcontractor upon the Contractor's or Subcontractor's request. "Apprenticeable craft or trade" as used in this Article means a craft or trade determined as an apprenticeable occupation in accordance with the rules and regulations prescribed by the California Apprenticeship Council. The ratio of work performed by apprentices to journeyman employed in a particular craft or trade on the Project shall be in accordance with Labor Code §1777.5.

- 24.3 Submission of Contract Information. Prior to commencing Work on the Project, the Contractor and Subcontractors shall submit contract award information to the applicable apprenticeship program(s) that can supply apprentices to the Project and make the request for the dispatch of apprentices in accordance with the Labor Code. The information submitted shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the Superintendent if requested. Within sixty (60) days after concluding Work on the Project, the Contractor and Subcontractors shall submit to the Superintendent, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the Project.
- 24.4 Apprentice Fund. The Contractor or any Subcontractor under him or her, who, in performing any of the Work under the Contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the Director determines is the prevailing amount of apprenticeship training contributions in the area of the Project. The Contractor and Subcontractors may take as a credit for payments to the California Apprenticeship Council any amounts paid by the Contractor or Subcontractor to an approved apprenticeship program that can supply apprentices to the Project. The Contractor and Subcontractors may add the amount of the contributions in computing its costs for the Contract.
- 24.5 Prime Contractor Compliance. The responsibility of compliance with this Article 13 §1777.5 of the Labor Code for all apprenticeable occupations is with the Prime Contractor. Any Contractor or Subcontractor that knowingly violates the provisions of this Article or Labor Code §1777.5 shall be subject to the penalties set forth in Labor Code §1777.7.
- 24.6 WHEN DETERMINING GMP, CONTRACTOR SHALL INCLUDE TO THE EXTENT POSSIBLE ANTICIPATED GENERAL PREVAILING WAGE RATES FOR THE TIME WHEN WORK ON THE PROJECT WILL ACTUALLY BE PERFORMED.

25. REGISTRATION WITH DEPARTMENT OF INDUSTRIAL RELATIONS

- 25.1 Strict compliance with all DIR registration requirements in accordance with Labor Code sections 1725.5 and 1771.1 is a material obligation of the Contractor and all of its subcontractors (of any tier) under the Contract Documents. The foregoing includes, without limitation, compliance with DIR registration requirements at all times during performance of the Work by the Contractor and all of its subcontractors of any tier. The failure of the Contractor and all subcontractors of any tier to be properly registered with DIR at all times during performance of the Work is a material breach of the Contract Documents and subject to termination for cause.
- 25.2 An affirmative and ongoing obligation of the Contractor under the Contract Documents is the verification that all subcontractors of any tier are at all times during performance of the Work are in full and strict compliance with the DIR registration requirements. The Contractor shall not permit or allow any subcontractor of any tier to perform any Work without the Contractor's verification that all subcontractors are in full and strict compliance with the DIR registration requirements. Any

subcontractors of any tier not properly registered with DIR shall be substituted in accordance with Labor Code section 1771.1. Contractor or its subcontractors of any tier shall not be entitled to any additional costs or time arising from or in any way related to compliance with the DIR registration requirements.

- 25.3 The Contractor and all subcontractors shall furnish certified payroll records as required pursuant Labor Code section 1776 directly to the Labor Commissioner in accordance with Labor Code section 1771.4 on at least on a monthly basis (or more frequently if required by the Superintendent or the Labor Commissioner) and in a format prescribed by the Labor Commissioner. The Superintendent reserves the right to withhold Progress Payments or Retention Payment if the Superintendent is notified, or determines as the result of its own investigation, that Contractor is in violation of any of the requirements set forth in Labor Code section 1720 *et seq.* at no penalty or cost to the Superintendent. Monitoring and enforcement of the prevailing wage laws and related requirements will be performed by the Labor Commissioner/ Department of Labor Standards Enforcement (DLSE).
- 25.4 The Labor Commissioner and the Division of Labor Standards Enforcement (DLSE) may conduct various compliance monitoring and enforcement activities including, but not limited to, confirming the accuracy of payroll records, conducting worker interviews, conducting audits, requiring submission of itemized statements prepared in accordance with Labor Code section 226, and conducting random in-person inspections of the Project site ("On-Site Visits"). On-Site Visits may include inspections of records, inspections of the Work site and observation of work activities, interviews of workers and others involved with the Project, and any other activities deemed necessary by the Labor Commissioner/DLSE to ensure compliance with prevailing wage requirements. The Labor Commissioner/DLSE shall have free access to any construction site or other place of labor and may obtain any information or statistics pertaining to the lawful duties of the Labor Commissioner/DLSE.
- 25.5 Any lawful activities conducted or any requests made by the Labor Commissioner/DLSE shall not be the basis for any delays, claims, costs, damages or liability of any kind against the Superintendent by the Contractor. Contractor and all Subcontractors shall cooperate and comply with any lawful requests by the Labor Commissioner's office. The failure of the Labor Commissioner, DLSE, or any other part of the Department of Industrial Relations to comply with any requirement imposed by the California Code of Regulations, Title 8, Chapter 8 shall not of itself constitute a defense to the failure to pay prevailing wages or to comply with any other obligation imposed by Division 2, Part 7, Chapter 1 of the Labor Code.
- 25.6 Prior to commencing any Work on the Project, the Contractor shall post the notice/poster required under the California Code of Regulations and Labor Code section 1771.4 in both English and Spanish at a conspicuous, weatherproof area at the Project site. The required notice/poster is available on the Labor Commissioner's website.

26. HOURS OF WORK

- 26.1 Eight (8) hours of work shall constitute a legal day's work. The Contractor and each subcontractor shall forfeit, as penalty to the Superintendent, twenty five dollars (\$25) for each worker employed in the execution of work on the Project by the Contractor or any subcontractor under him for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any calendar week in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815, thereof, inclusive, except that work performed by employees of the Contractor and his subcontractors in excess of eight hours per day at not less than one and one half times the basic rate of pay, as provided in Labor Code section 1815.
- 26.2 Generally, construction work on the Project shall be accomplished on a regularly scheduled eight (8) hour per day work shift basis, Monday through Friday, between the hours of 7:00 a.m. and 5:00 p.m., however nothing herein shall prevent Contractor from working weekends and after school

hours in order to complete the Project so long as not otherwise prohibited by law or local ordinances or regulations.

- 26.3 Any work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed and included within the GMP, unless otherwise agreed to in writing before the work in question is commenced pursuant to Article 9, Extra Work/Modifications.

27. SKILLED AND TRAINED WORKFORCE

- 27.1 Contractor and all Subcontractors of any tier must comply with the requirements set forth in Education Code section 17407.5 and Public Contract Code sections 2601 and 2602, including providing an enforceable commitment that the Contractor and all Subcontractors of any tier will use a "Skilled and Trained Workforce" as defined in Public Contract Code section 2601(d). Contractor and all Subcontractors are to carefully review all requirements set forth in Education Code section 17407.5 and Public Contract Code sections 2601 and 2602 before entering into the Contract for the Project.
- 27.2 The Contractor's commitment that a Skilled and Trained Workforce will be used to perform Work on the Project and the Contract shall be established by the following:
- 27.2.1 Contractor shall include in all of its subcontracts, and Subcontractors shall require in its subcontracts of any tier, mandatory compliance with Education Code section 17407.5 and Public Contract Code sections 2601 and 2602.
- 27.2.2 Contractor shall provide to the Superintendent's Governing Board, on a monthly basis while the Project or Contract is being performed, a written report demonstrating that the Contractor and all Subcontractors of any tier are complying with the requirements set forth in Education Code section 17407.5 and Public Contract Code sections 2601 and 2602. If the Contractor fails to provide the monthly report required herein, or provides a report that is incomplete, the Superintendent shall withhold further payments in accordance with Public Contract Code sections 2602 and 2603. If a monthly report does not demonstrate compliance with Public Contract Code sections 2601 and 2602, the Superintendent shall withhold further payments until the Contractor provides a plan to achieve substantial compliance with Public Contract Code sections 2601 and 2602, with respect to the relevant apprenticeable occupation, prior to completion of the Project.
- 27.2.3 The monthly report provided to the Superintendent's Governing Board as required above shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), and shall be open to public inspection.
- 27.2.4 Contractor's commitment that a Skilled and Trained Workforce will be used to perform Work on the Project and the Contract may also be established by the Contractor providing evidence and any other information or documents reasonably requested by the Superintendent showing that the Contractor has entered into a project labor agreement that includes the requirements of Education Code section 17407.5(b) that will bind the Contractor and all its Subcontractors of any tier performing Work on the Project or Contract.
- 27.3 If the Superintendent's Governing Board has entered into a project labor agreement that will bind all contractors and subcontractors performing Work on this Project or Contract that includes the requirements of Education Code section 17407.5(b), the Contractor's agreement that it will become a party to that project labor agreement shall satisfy the requirements under Education Code section 17407.5(b).

- 27.4 If the Contractor or Subcontractor of any tier is not in compliance with all of the applicable Skilled and Trained Workforce requirements, the Superintendent shall exercise any rights or remedies allowed under Public Contract Code sections 2602 or 2603, or other applicable law.

28. PROTECTION OF PERSONS AND PROPERTY

- 28.1 Fingerprinting. If any portion of the work for the Project is to be performed at an operating school facility, Contractor shall comply with the applicable requirements of Education Code sections 45125.1 and 45125.2 with respect to fingerprinting of employees who may have contact with students. Contractor shall also ensure that its Subcontractors on the Project comply with the applicable requirements of Sections 45125.1 and 45125.2. To this end, Contractor and its Subcontractors must provide for the completion of the Fingerprint Certification form attached as Exhibit "F" and incorporated herein by this reference prior to commencing work on the Project. In no event shall any employees of Contractor or its Subcontractors come into contact with any students before the certification is completed. Contractor's failure to comply with this law shall be considered a material breach of the Agreement upon where the Agreement may be terminated, at Superintendent's sole discretion, without any further compensation to Contractor. Contractor and Subcontractor personnel on Site shall not have been convicted of any criminal offense which may have a discernible adverse impact on the Superintendent or any students. Contractor shall advise its employees of these requirements before they enter on the Site and shall immediately remove from the Site any employee in violation of these requirements as determined by Contractor or by Superintendent. Contractor shall impose these requirements on its Subcontractors.
- 28.2 Contractor has been advised and is aware that Superintendent has adopted a Board Policy which prohibits the use of tobacco products, including smokeless tobacco, anywhere on Superintendent property. Contractor shall be responsible for the enforcement of Superintendent's tobacco-free policy among all Contractor's employees and Subcontractors while on Superintendent property. Contractor understands and agrees that should any employee or Subcontractor of Contractor violate the Board Policy, after having already been warned once for violating Superintendent's tobacco-free policy, Contractor shall remove the individual for the duration of the Project. Contractor shall not be entitled to any additional compensation and/or time in completing the Project as a result of such removal.
- 28.3 Contractor shall take all steps necessary to insure that employees of Contractor or any of its Subcontractors' employees do not use, consume, or work under the influence of alcohol or illegal drugs while on the Project. Contractor shall prevent any of its employees or its Subcontractors' employees from playing any recorded music devices or radios or wearing any radio headphone devices for entertainment while working on the Project. Contractor shall also prevent its employees or Subcontractors' employees from bringing any animal onto the Project.
- 28.4 Contractor shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of this Contract and shall take all necessary measures and be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance by Superintendent.
- 28.5 Contractor shall take, and require Subcontractors to take, all necessary precautions for safety of workers on the work and shall comply with all applicable federal, state, local and other safety laws, standards, orders, rules, regulations, and building codes to prevent accidents or injury to persons on, about, or adjacent to premises where work is being performed and to provide a safe and healthful place of employment. In addition to meeting all requirements of OSHA, Cal-OSHA, state, and local codes, Contractor shall furnish, erect and properly maintain at all times, as directed by Superintendent or required by conditions and progress of work, all necessary safety devices, safeguards, construction canopies, signs, audible devices for protection of the blind, safety rails, belts and nets, barriers, lights, and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of construction. Contractor shall designate a responsible member of its organization on the work, whose duty shall

be to post information regarding protection and obligations of workers and other notices required under occupational safety and health laws, to comply with reporting and other occupational safety requirements, and to protect the life, safety and health of workers. Name and position of person so designated shall be reported to Superintendent by Contractor. Contractor shall correct any violations of safety laws, rules, orders, standards or regulations. Upon the issuance of a citation or notice of violation by the Division of Occupational Safety and Health, such violation shall be corrected promptly.

- 28.6 In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from Superintendent, is hereby permitted to act, at its discretion, to prevent such threatened loss or injury; and Contractor shall so act if so authorized or instructed by Superintendent. Any compensation claimed by Contractor on account of emergency work shall be determined by agreement.
- 28.7 Contractor shall provide such heat, covering, and enclosures as are necessary to protect all work, materials, equipment, appliances, and tools against damage by weather conditions.
- 28.8 Contractor shall take adequate precautions to protect existing roads, sidewalks, curbs, pavements, utilities, adjoining property and structures (including, without limitation, protection from settlement or loss of lateral support), and to avoid damage thereto, and repair any damage thereto caused by construction operations. All permits, licenses, or inspection fees required for such repair work shall be obtained and paid for by Contractor.
- 28.9 Trenches Five Feet or More in Depth. The Contractor shall submit to the Superintendent, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches five feet or more in depth. The Contractor shall also submit a copy of its annual trench/excavation permit approved by CAL-OSHA. The plan shall be prepared by a registered civil or structural engineer. As part of the plan, a note shall be included stating that the registered civil or structural engineer certifies that the plan complies with CAL OSHA Construction Safety Orders, or stating that the registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping, or other provisions of the Safety Orders.
- 28.9.1 All shoring submittal shall include surcharge loads from adjacent embankments, construction loads and spoil bank. Submittal shall indicate minimum horizontal distance from top of trench to edge of all surcharge loads for all cases of shoring and side slopes.
- 28.9.2 Nothing in this Section shall relieve Contractor of the full responsibility for providing shoring, bracing sloping, or other provisions adequate for worker protection. If such plan varies from the shoring system standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer and shall be approved by CAL-OSHA. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the Superintendent or the person to whom authority to accept has been delegated by the Superintendent.
- 28.10 Contractor shall (unless waived by Superintendent in writing):
- 28.10.1 When performing construction on existing sites, become informed and take into specific account the maturity of the students on the site; and when performing work which may interfere with the school routine before, during or after school hours, enclose working area with a substantial barricade, and arrange work to cause minimum amount of inconvenience and danger to students and faculty in their regular school activities.
- 28.10.2 Not allow any person, other than workers on the Project, or individuals authorized by Superintendent to come upon any portion of the premises where work is being

performed. Contractor shall require all workers on the Project to be conspicuously identified either by a firm logo on their clothing, or by means of a prominent identification badge.

- 28.10.3 Provide substantial barricades around any shrubs or trees indicated to be preserved.
- 28.10.4 Deliver materials to building area over route designated by Superintendent.
- 28.10.5 Take preventive measures to eliminate dust.
- 28.10.6 Confine apparatus, the storage of materials, and the operations of workers to limits indicated by law, ordinances, permits, or directions of Superintendent; and shall not interfere with the work or unreasonably encumber premises or overload any structure with materials; and enforce all instructions of Superintendent regarding signs, advertising, fires, smoking, the presence of liquor, and the presence of firearms and require that all workers comply with all regulations while on construction site.
- 28.10.7 Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by an approved land surveyor or civil engineer at no cost to Superintendent.
- 28.10.8 Not allow personal radios on the work site
- 28.10.9 Where the Project involves work at an operating school facility, inform and take such preventive measures necessary to insure that all employees, Subcontractors and other individuals authorized on the Project site refrain from any personal contact or conversations with the students on site.
- 28.10.10 Contractor shall not impose structural loading upon any part of the work under construction or upon existing construction on or adjacent to the Site in excess of safe limits, or loading such as to result in damage to the structural, architectural, mechanical, electrical, or other components of the work. The design of all temporary construction equipment and appliances used in construction of the work and not a permanent part thereof, including, without limitation, hoisting equipment, cribbing, shoring, and temporary bracing of structural steel, is the sole responsibility of Contractor. All such items shall conform with the requirements of governing codes and all laws, ordinances, rules, regulations, and orders of all authorities having jurisdiction. Contractor shall take reasonable and customary precautions, such as shoring of masonry walls and temporary tie bracing of structural steel work, to prevent possible wind damage during construction of the work. The installation of such bracing or shoring shall not damage the work in place or the work installed by others. Any damage which does occur shall be promptly repaired by Contractor at no cost to Superintendent.
- 28.10.11 Contractor shall require that Subcontractors participate in, and enforce, the safety and loss prevention programs established by Contractor for the Project, which will cover all work performed by Contractor and its Subcontractors. All Subcontractors and material or equipment suppliers shall cooperate fully with Contractor, Superintendent, and all insurance carriers. Subcontractors shall immediately, within twenty four (24) hours, report in writing to Contractor all accidents whatsoever arising out of, or in connection with, the performance of the work, whether on or off the Site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. Contractor shall thereafter immediately, within two (2) days, report the facts in writing to Superintendent giving full details of the accident.

- 28.10.12 Contractor and Subcontractors shall use only those ingress and egress routes designated by Superintendent, observe the boundaries of the Site designated by Superintendent, park only in those areas designated by Superintendent, which areas may be on or off the Site, and comply with any parking control program established by Superintendent, such as furnishing license plate information and placing identifying stickers on vehicles.
- 28.10.13 Contractor shall be responsible for providing security services for the Site as needed for the protection of the Site and as determined in Superintendent's reasonable discretion.
- 28.10.14 Contractor shall, for all contracts involving state funds, submit a "Drug-Free Workplace Certification." Contractor shall take all reasonable steps necessary to ensure that any employees of Contractor or any of its Subcontractors' employees report for work in a manner fit to do their job. Such employees shall not be under the influence of or in possession of any alcoholic beverage or of any controlled substance (except a controlled substance as prescribed by a physician so long as the performance or safety at the Project Site is not affected thereby). Contractor shall advise its employees of these requirements before they enter on the Site and shall immediately remove from the site any employee in violation of these requirements as determined by Contractor or by the Superintendent. Contractor shall impose these requirements on its Subcontractors.
- 28.10.15 Contractor and Subcontractors shall at all times enforce strict discipline and good order among their employees and other persons carrying out the Contract and shall not employ on work any unfit person or anyone not skilled in work assigned to such person. It shall be the responsibility of Contractor to ensure compliance with this Article. Any person in the employ of Contractor or Subcontractors whom Superintendent may deem incompetent, unfit, intemperate, troublesome or otherwise undesirable shall be excluded from the work Site and shall not again be employed on it except with written consent of Superintendent. Contractor must sign and cause all Subcontractors to sign the Conduct Rules for Contractors form attached as Exhibit "I" and incorporated herein by this reference prior to commencing work on the Project.
- 28.11 Contractor shall be at all times during the performance of work hereunder in full compliance with the provisions of the Immigration Reform and Control Act of 1986 ("IRCA") in the hiring of its employees, and Contractor shall indemnify, hold harmless and defend Superintendent against any and all actions, proceedings, penalties or claims arising out of Contractor's failure to comply strictly with the IRCA.
- 28.12 Site Fire Safety Plan. The Contractor shall be responsible to coordinate its services with the Architect of Record and/or Structural Engineer of Record for the Project to develop and obtain approval of a Site Fire Safety Plan for the Project meeting the requirements and as set forth in California Fire Code Chapter 33. At a minimum, the Site Fire Safety Plan shall include all information required in California Fire Code section 3303.1.1. Contractor shall note specific requirements set forth in California Fire Code Chapter 33 including, but not limited to, providing a fire watch during non-working hours for new construction that exceed 40 feet in height above the lowest adjacent grade at any point along the building perimeter, providing portable fire extinguishers, etc. All Work on the Project shall be in accordance with Chapter 33 of the California Building Code and California Fire Code, and the approved written Site Fire Safety Plan. No construction activity shall commence on the Site prior to the DSA's approval of the submission of the Site Fire Safety Plan. Any costs and delays by the Contractor for its failure to coordinate its services to develop and obtain approval of the required Site Fire Safety Plan shall be the sole responsibility of the Contractor and shall not be the basis for any type of delay claim or delay-related damages.

29. PAYMENTS AND RETENTION

The Construction Cost of the Project shall not exceed the GMP, except as otherwise provided in this Construction Services Agreement and Sublease. During the progress of construction, Contractor will provide monthly progress payment applications for the total scheduled value of the work completed under the GMP set forth in Article 3. Superintendent shall pay to Contractor a monthly progress payment comprising a sum equal to ninety-five percent (95%) of the scheduled value of the work approved and completed up to the last day of the previous month, less aggregate of previous payments ("Progress Payment"). If all of the necessary information is submitted and accurate (including the schedule of values), Superintendent shall approve the Progress Payments within fifteen (15) days after Superintendent's receipt of the periodic estimate for partial payment and Superintendent shall pay such payments within fifteen (15) days after the Superintendent's approval of the periodic estimate for partial payment. Progress Payments shall be made on the basis of monthly estimates which shall be prepared by Contractor on a form approved by Superintendent and certified by Architect and Project Inspector, or any other approved representative of the Superintendent, and filed before the fifth day of the month during which payment is to be made. Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall release Contractor or any bondsman from such work or from enforcing each and every provision of this document and Superintendent shall have the right subsequently to correct any error made in any estimate for payment. Contractor shall not be entitled to have any payment estimates processed or be entitled to have any payment made for work performed so long as any lawful or proper direction concerning non-complying work or any portion thereof given by the Superintendent lacks correction by Contractor. Superintendent shall withhold from the Progress Payments 150% of the estimated value of non-complying work unless satisfactorily corrected or remedied. Contractor shall, at a minimum, provide the following documents as part of its request for a Progress Payment: (1) Schedule of Values, (2) Project Contingency Trackers, (3) Project Allowance Trackers, (4) Project Savings Reports (Refer to the Project Savings Section for the Project Savings Items) including the budget versus actual costs of Project Management and General Condition Expenses, (5) Project Daily Reports (Contractor and Subcontractor), (6) Project Safety Reports, (7) Monthly Lien Releases Unconditional and Conditional Waivers (all contractors), and (8) Monthly Schedule Update and Narratives (with Recovery Schedules as needed).

29.1 The Superintendent shall retain five percent (5%) "Retention" from Progress Payments and release Retention as required in this CSA and specifically, not until after Close-Out under Article 13.16.

29.2 In no event shall the cumulative total of the Progress Payments/ Sublease Payments and Retention ever exceed the GMP as defined herein, unless specifically allowed under Article 5.

29.2.1 Title to new materials and/or equipment for the work of this contract, on a continuous basis while the Project is being completed, shall vest in the Superintendent. However, responsibility for such new material and/or work of this contract shall remain with the Contractor until incorporated into the work and accepted by Superintendent; no part of said materials and/or equipment shall be removed from its place of storage except for immediate installation in the work of this contract; and Contractor shall keep an accurate inventory of all said materials and/or equipment in a manner satisfactory to the owner or his authorized representative.

Notwithstanding anything to the contrary stated above, the Contractor may include in its request for payment the value of any structural steel, glue laminated beams, trusses, bleachers and other such custom-made materials prepared specifically for the Project and unique to the Project so long as all of the following requirements are satisfied:

29.2.1.1 The aggregate cost of materials stored off-site shall not exceed Twenty Five Thousand Dollars (\$25,000) at any time or as otherwise agreed to be Superintendent in writing;

- 29.2.1.2 Title to such materials shall be vested in the Superintendent as evidenced by documentation satisfactory in form and substance to the Superintendent, including, without limitation, recorded financing statements, UCC filings and UCC searches;
- 29.2.1.3 With each request for payment, the Contractor shall submit to the Superintendent a written list identifying each location where materials are stored off-site (which must be a bonded warehouse) and the value of the materials at each location. The Contractor shall procure insurance satisfactory to the Superintendent (in its reasonable discretion) for materials stored off-site in an amount not less than the total value thereof;
- 29.2.1.4 The consent of any Surety shall be obtained to the extent required prior to payment for any materials stored off-site;
- 29.2.1.5 Representatives of the Superintendent shall have the right to make inspections of the storage areas at any time; and
- 29.2.1.6 Such materials shall be (1) protected from diversion, destruction, theft and damage to the reasonable satisfaction of the Superintendent; (2) specifically marked for use on the Project; and (3) segregated from other materials at the storage facility.

29.3 Reasons to Withhold Payment. The Superintendent may withhold any payment, in whole, or in part, to such extent as may be necessary to protect the Superintendent from loss because of, but not limited to:

- 1. Defective Work not remedied;
- 2. Stop Notices served upon the Superintendent;
- 3. Liquidated damages assessed against the Contractor;
- 4. The cost of completion of the Contract if there exists reasonable doubt that the Work can be Completed for the unpaid balance of any Contract Price or by the completion date;
- 5. Damage to the Superintendent or other contractor;
- 6. Unsatisfactory prosecution of the Work by the Contractor;
- 7. Failure to store and properly secure materials;
- 8. Failure of the Contractor to submit on a timely basis, proper and sufficient documentation required by the Contract Documents, including, without limitation, acceptable monthly progress schedules, Shop Drawings, Submittal schedules, schedule of values, product data and samples, proposed product lists, executed Change Order, Construction Change Documents, and verified reports;
- 9. Failure of the Contractor to maintain As-Built drawings;
- 10. If, in the Superintendent's opinion, the representations to the Superintendent required pursuant to Article 9.4 cannot be made;
- 11. Erroneous estimates by the Contractor of the value of the Work performed, or other false statements in an application for payment;

12. Unauthorized deviations from the Contract Documents (including but not limited to Unresolved Notices of Deviations (DSA Form 154);
13. Failure of the Contractor to prosecute the Work in a timely manner in compliance with established progress schedules and completion dates;
14. Failure to properly pay prevailing wages as defined in Labor Code section 1720, *et seq.*;
15. Failure to properly maintain or clean up the Site;
16. Payments to indemnify, defend, or hold harmless the Superintendent;
17. Any payments due to the Superintendent including, but not limited to, payments for failed tests, or utilities changes or permits;
18. Failure to submit an acceptable schedule in accordance with Article 9;
19. Failure to Submit an approved Site Fire Safety Plan to DSA;
20. Failure to pay Subcontractor or suppliers;
21. Failure to secure warranties, including the cost to pay for warranties;
22. Failure to provide release from material suppliers or Subcontractors when requested to do so;
23. Items deducted pursuant to Article 17.6;
24. Incomplete Punch List items under Article 13.6 which have gone through the Article 12.2 process; or
25. Allowances that have not been used.

29.4 Reallocation of Withheld Amounts. Superintendent may, in its discretion, apply any withheld amount to payment of outstanding claims or obligations. In so doing, Superintendent shall make such payments on behalf of Contractor. If any payment is so made by Superintendent, then such amount shall be considered as a payment made under this CSA to Contractor and Superintendent shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligation. Superintendent will render Contractor an accounting of such funds disbursed on behalf of Contractor.

If Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision thereof, Superintendent may, after ten (10) calendar days written notice to the Contractor and without prejudice to any other remedy make good such deficiencies. The Superintendent shall adjust the total Contract price by reducing the amount thereof by the cost of making good such deficiencies. If Superintendent deems it inexpedient to correct Work which is damaged, defective, or not done in accordance with Contract provisions, an equitable reduction in the Contract price (of at least 150% of the estimated reasonable value of the nonconforming Work) shall be made therefor.

29.5 Payment After Cure. When the grounds for declining approval are removed, payment shall be made for amounts withheld because of them. No interest shall be paid on any retention or amounts withheld due to the failure of the Contractor to perform in accordance with the terms and conditions of the Contract Documents.

30. NONCONFORMING WORK

Contractor shall promptly remove from premises all Work identified by Superintendent as failing to conform to the Contract whether incorporated or not. Contractor shall promptly replace and re-execute its own Work to comply with the Contract without additional expense to Superintendent and shall bear the expense of making good all Work of other contractors destroyed or damaged by such removal or replacement.

If Contractor does not remove such Work which has been identified by Superintendent as failing to conform to the Contract Documents within a reasonable time, fixed by written notice, Superintendent may remove it and may store the material at Contractor's expense. If Contractor does not pay expenses of such removal within ten (10) calendar days' time thereafter, Superintendent may, upon ten (10) calendar days' written notice, sell such materials at auction or at private sale and shall account for net proceeds thereof, after deducting all costs and expenses that should have been borne by Contractor.

31. SUBCONTRACTOR PAYMENTS

- 31.1 Payments to Subcontractors. No later than ten (10) days after receipt, or pursuant to Business and Professions Code section 7108.5, the Contractor shall pay to each Subcontractor, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.
- 31.2 No Obligation of Superintendent for Subcontractor Payment. The Superintendent shall have no obligation to pay, or to see to the payment of, money to a Subcontractor except as may otherwise be required by law.
- 31.3 Payment Not Constituting Approval or Acceptance. An approved request for a Progress Payment, a Certificate of Substantial Completion, or partial or entire use or occupancy of the Project by the Superintendent shall not constitute acceptance of Work that is not in accordance with the Contract Documents.
- 31.4 Joint Checks. Superintendent shall have the right, if necessary for the protection of the Superintendent, to issue joint checks made payable to the Contractor and Subcontractors and material or equipment suppliers. The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint check payment be construed to create any contract between the Superintendent and a Subcontractor of any tier, any obligation from the Superintendent to such Subcontractor, or rights in such Subcontractor against the Superintendent. The Superintendent may choose to issue joint checks at Superintendent's sole discretion.

32. SEPARATE CONTRACTS

- 32.1 Reservation of Rights to have other Contractors on Site. Superintendent reserves the right to let other contractors enter the Site to perform work as part of its use of the Site. Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate the Project with the work of such Contractors. Such contractors shall comply with all applicable State safety laws and regulations and shall provide a certificate of insurance naming Contractor as additional insured
- 32.2 Notice of Coordination of Work. If the proper execution of any part of the Contractor's work on the Project depends upon the work of any such contractors, Contractor shall inspect and promptly report to Superintendent any patent defects or other problems it identifies in such work that render it unsuitable for such proper execution and results. Contractor is only required to inspect the work of such other contractors prior to commencing its own further work in connection with or in relation to that other work. Further, Contractor is only expected to identify patent defects or other problems,

and is not required to do any destructive testing or to monitor the progress of such work by other contractors prior to its completion. In no event shall the work of such other contractors be covered by the warranty given by Contractor to the Superintendent, nor shall Contractor be required to provide insurance for such work.

33. USE OF PREMISES/SAFETY

Contractor shall confine operations at the Site to areas permitted by law, ordinances, permits and the Construction Documents and shall not unreasonably encumber the Site or existing facilities on the Site with any materials or equipment. Contractor shall not load or permit any part of the work to be loaded with a weight so as to endanger the safety of persons or property at the Site. The Contractor shall maintain emergency first aid treatment for his employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 USC, section 651 *et seq.*).

34. CLEANING UP

- 34.1 Contractor's Responsibility to Clean Up. Contractor at all times shall keep premises free from debris such as waste, dust, excess water, storm water runoffs, rubbish, and excess materials and equipment. Contractor shall not leave debris under, in, or about the premises, but shall promptly remove same from the premises and dispose of it in a lawful manner. Disposal receipts or dump tickets shall be furnished to the Architect within five (5) days of request.

Contractor shall remove rubbish and debris resulting from the Work on a daily basis. Contractor shall maintain the structures and Site in a clean and orderly condition at all times until acceptance of the Project by the Superintendent. Contractor shall keep its access driveways and adjacent streets, sidewalks, gutters and drains free of rubbish, debris and excess water by cleaning and removal each day. All concrete, sidewalks, and paths of travel shall be broom cleaned daily.

- 34.2 General Final Clean-Up. Upon completion of Work, Contractor shall employ experience workers or professional cleaners for final cleaning. Clean each surface to the condition expected in a normal, commercial, building cleaning and maintenance program.

1. Clean interior and exterior of buildings, including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections, and any areas where debris has collected, so surfaces are free from foreign material or discoloration;
2. Clean the Project site. The grounds should be cleared of any Contractor equipment, raked clean of debris and trash removed. Sweep paved areas broom clean.
3. Repair or replace any damaged materials. Replace any chipped or broken glass.
4. Remove any and all stains.
5. Remove labels that aren't permanent labels.
6. Clean and polish all glass, plumbing fixtures, equipment, finish hardware and similar finish surfaces. Remove any glazing compounds
7. Remove temporary utilities, fencing, barricades, planking, sanitary facilities and similar temporary facilities from Site.
8. Remove temporary film that remains on any hardware, doors or other surfaces.
9. Seal the bottom and tops of all doors
10. Special Clean-Up.

11. In addition to the general cleaning, the following special cleaning shall be done at the completion of the Work in accordance with the specifications including, but not limited to:
- a. Remove putty stains from glazing, then wash and polish glazing.
 - b. Remove marks, stains, fingerprints and other soil or dirt from painted, stained or decorated work.
 - c. Remove temporary protection and clean and polish floors and waxed surfaces.
 - d. Clean and polish hardware and plumbing trim; remove stains, dust, dirt, plaster and paint
 - e. Wipe surfaces of mechanical and electrical equipment.
 - f. Remove spots, soil, plaster and paint from tile work, and wash tile.
 - g. Clean all fixtures and equipment, remove excess lubrication, clean light fixtures and lamps, polish metal surfaces.
 - h. Vacuum-clean carpeted surfaces.
 - i. Remove debris from roofs, down spout and drainage system.
- 34.3 Failure to Cleanup. If the Contractor fails to clean up as provided in the Contract Documents, the Superintendent may do so, and the cost thereof shall be the responsibility of the Contractor pursuant to Article 12.2 and seek a Deductive Change Order.

35. INSURANCE

- 35.1 Insurance Requirements. Before the commencement of the Work, the Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in California as admitted carriers with a financial rating of at least an A status as rated in the most recent edition of Best's Insurance Reports or as otherwise amended in these Contract Documents, such insurance as will protect the Superintendent from claims set forth below, which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations are by the Contractor, by a Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The Superintendent will not accept any surplus line carriers.
- 1. Claims for damages because of bodily injury, sickness, disease, or death of any person Superintendent would require indemnification and coverage for employee claim;
 - 2. Claims for damages insured by usual personal injury liability coverage, which are sustained by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor or by another person;
 - 3. Claims for damages because of injury or destruction of tangible property, including loss of use resulting therefrom, arising from operations under the Contract Documents;
 - 4. Claims for damages because of bodily injury, death of a person, or property damage arising out of the ownership, maintenance, or use of a motor vehicle, all mobile equipment, and vehicles moving under their own power and engaged in the Work;
 - 5. Claims involving contractual liability applicable to the Contractor's obligations under the Contract Documents, including liability assumed by and the indemnity and defense obligations of the Contractor and the Subcontractors; and

6. Claims involving Completed Operations, Independent Contractors' coverage, and Broad Form property damage, without any exclusions for collapse, explosion, demolition, underground coverage, and excavating. (XCU)
 7. Claims involving sudden or accidental discharge of contaminants or pollutants.
- 35.2 Subcontractor Insurance Requirements. The Contractor shall require its Subcontractors to take out and maintain similar public liability insurance and property damage insurance required under this Article in like amounts. A "claims made" or modified "occurrence" policy shall not satisfy the requirements of this Article without prior written approval of the Superintendent.
- 35.3 Additional Insured Endorsement Requirements. The Contractor shall name, on any policy of insurance required under this Article, the Superintendent, Architect, Inspector, the State of California, their officers, employees, agents and independent contractors as additional insureds. Subcontractors shall name the Contractor, the Superintendent, Architect, Inspector, the State of California, their officers, employees, agents and independent contractors as additional insureds. The Additional Insured Endorsement included on all such insurance policies shall be an ISO CG 20 10 (11/85), or an ISO CG 20 10 (10/01) ongoing operations and CG 20 37 (10/01) completed operations, or an ISO CG 20 10 (10/01) ongoing operations and CG 2038 (04/13) completed operations, or their equivalent as determined by the Superintendent in its sole discretion, and must state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The insurance provided by the Contractor pursuant to this Article must be designated in the policy as primary to any insurance obtained by the Superintendent. The amount of the insurer's liability shall not be reduced by the existence of such other insurance.
- 35.4 Specific Insurance Requirements
- 35.4.1 Contractor shall take out and maintain and shall require all Subcontractors, if any, whether primary or secondary, to take out and maintain:
- 35.4.2 Comprehensive General Liability Insurance with a combined single limit per occurrence of not less than \$2,000,000.00 or Commercial General Liability Insurance (including automobile insurance) which provides limits of not less than:
- | | | |
|----|--|----------------|
| 1. | Per occurrence (combined single limit) | \$2,000,000.00 |
| 2. | Project Specific Aggregate (for this Project only) | \$4,000,000.00 |
| 3. | Products and Completed Operations | \$2,000,000.00 |
| 4. | Personal and Advertising Injury Limit | \$2,000,000.00 |
- 35.4.3 Insurance Covering Special Hazards. The following Special hazards shall be covered by riders or riders to above mentioned public liability insurance or property damage insurance policy or policies of insurance, in amounts as follows:
- | | | |
|----|---|----------------|
| 1. | Automotive and truck where operated in amounts | \$2,000,000.00 |
| 2. | Material Hoist where used in amounts | \$2,000,000.00 |
| 3. | Explosion, Collapse and Underground (XCU coverage) | \$2,000,000.00 |
| 4. | In addition, provide Excess Liability Insurance coverage in the amount of Five Million Dollars (\$5,000,000.00). Providing Excess or Umbrella policies to | |

meet or supplement the primary limits of any insurance required in this Article is not allowed. All required insurance limits must be met by the primary policy.

35.5 Workers' Compensation Insurance. During the term of this Contract, the Contractor shall provide workers' compensation insurance (not less than \$1 million) for all of the Contractor's employees engaged in Work under this Contract on or at the Site of the Project and, in case any of the Contractor's Work is subcontracted, the Contractor shall require the Subcontractor to provide workers' compensation insurance (not less than \$1 million) for all the Subcontractor's employees engaged in Work under the subcontract. Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in Work under this Contract on or at the Site of the Project is not protected under the Workers' Compensation laws, the Contractor shall provide or cause a Subcontractor to provide adequate insurance coverage for the protection of those employees not otherwise protected. The Contractor shall file with the Superintendent certificates of insurance and in comply with Labor Code § 3700.

35.6 Builder's Risk/All Risk

35.6.1 *Course-of-Construction Insurance Requirements.* The Contractor, during the progress of the Work and until final acceptance of the Work by Superintendent and upon completion of the entire Contract, shall maintain Builder's Risk, Course of Construction or similar first party property coverage issued on a replacement value basis consistent with the total replacement cost of the structures where work is being performed inclusive of all Work for the Project included within the Contract Documents. Coverage is to insure against all risks of accidental direct physical loss, and must include, by the basic grant of coverage or by endorsement, the perils of vandalism, malicious mischief (both without any limitation regarding vacancy or occupancy), fire, sprinkler leakage, civil authority, sonic boom, earthquake, flood, collapse, wind, lightning, smoke and riot. The coverage must include debris removal, demolition, increased costs due to enforcement of building ordinance and law in the repair and replacement of damage and undamaged portions of the property, and reasonable costs for the Architect's and engineering services and expenses required as a result of any insured loss upon the Work and Project which is the subject of the Contract Documents, including the underlying structure where Work is being performed, completed Work and Work in progress, to the full insurable value thereof. Such insurance shall include the Superintendent and the Architect as additional named insureds, and any other person with an insurable interest as designated by the Superintendent.

The Contractor shall submit to the Superintendent for its approval all items deemed to be uninsurable. The risk of the damage to the Work due to the perils covered by the "Builder's Risk/All Risk" Insurance, as well as any other hazard which might result in damage to the Work, is that of the Contractor and the surety, and no claims for such loss or damage shall be recognized by the Superintendent nor will such loss or damage excuse the complete and satisfactory performance of the Contract by the Contractor.

35.7 Fire Insurance. Before the commencement of the Work, the Contractor shall procure, maintain, and cause to be maintained at the Contractor's expense, fire insurance on all Work subject to loss or damage by fire. The amount of fire insurance shall be sufficient to protect the Project against loss or damage in full until the Work is accepted by the Superintendent.

35.8 Other Insurance. The Contractor shall provide all other insurance required to be maintained under applicable laws, ordinances, rules, and regulations.

35.9 Proof of Insurance. The Contractor shall not commence Work nor shall it allow any Subcontractor to commence Work under this Contract until all required insurance and certificates have been

obtained and delivered in duplicate to the Superintendent for approval subject to the following requirements:

35.9.1 Certificates and insurance policies shall include the following clause:

1. “This policy shall not be non-renewed, canceled, or reduced in required limits of liability or amounts of insurance until notice has been mailed to the Superintendent. Date of cancellation or reduction may not be less than thirty (30) days after the date of mailing notice.”
2. Certificates of insurance shall state in particular those insured, the extent of insurance, location and operation to which the insurance applies, the expiration date, and cancellation and reduction notices.
3. Certificates of insurance shall clearly state that the Superintendent and the Architect are named as additional insureds under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by Superintendent.
4. The Contractor and its Subcontractors shall produce a certified copy of any insurance policy required under this Article upon written request of the Superintendent.

35.10 Compliance. In the event of the failure of Contractor to furnish and maintain any insurance required by this Article 34, the Contractor shall be in default under the Contract. Compliance by Contractor with the requirement to carry insurance and furnish certificates or policies evidencing the same shall not relieve the Contractor from liability assumed under any provision of the Contract Documents, including, without limitation, the obligation to defend and indemnify the Superintendent and the Architect.

35.11 No Waiver Created through Payments. The making of any payments under this CSA or the Sublease shall not be construed as creating an insurable risk interest by or for the Superintendent or be construed as relieving the Contractor or his Subcontractors of responsibility for loss from any direct physical loss, damage, or destruction occurring prior to Completion of the Project.

35.12 Waiver of Subrogation. Contractor waives (to the extent permitted by law) any right to recover against the Superintendent for damages to the Work, any part thereof, or any and all claims arising by reason of any of the foregoing, but only to the extent that such damages and/or claims are covered by property insurance and only to the extent of such coverage (which shall exclude deductible amounts) by insurance actually carried by the Superintendent.

The provisions of this section are intended to restrict each party to recovery against insurance carriers only to the extent of such coverage and waive fully and for the benefit of each, any rights and/or claims which might give rise to a right of subrogation in any insurance carrier. The Superintendent and the Contractor shall each obtain in all policies of insurance carried by either of them, a waiver by the insurance companies thereunder of all rights of recovery by way of subrogation for any damages or claims covered by the insurance.

35.13 Performance and Payment Bonds

35.13.1 *Bond Requirements.* Prior to commencing any portion of the Work, the Contractor shall furnish separate payment and performance bonds for its portion of the Work which shall cover 100% faithful performance of and payment of all obligations arising under the Contract Documents and/or guaranteeing the payment in full of all claims for labor performed and materials supplied for the Work. All bonds shall be provided by a corporate surety authorized and admitted to transact business in California as sureties.

To the extent, if any, that the Contract Price is increased in accordance with the Contract Documents, the Contractor shall, upon request of the Superintendent, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the Superintendent. To the extent available, the bonds shall further provide that no change or alteration of the Contract Documents (including, without limitation, an increase in the Contract Price, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor will release the surety. If the Contractor fails to furnish the required bonds, the Superintendent may terminate the Contract for cause.

- 35.13.2 *Surety Qualification.* Only bonds executed by admitted Surety insurers as defined in Code of Civil Procedure § 995.120 shall be accepted. Surety must be a California-admitted surety and listed by the U.S. Treasury with a bonding capacity in excess of the Project cost.
- 35.13.3 *Alternate Surety Qualifications.* If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with § 995.660 of the California Code of Civil Procedure and proof of such is provided to the Superintendent.
- 35.13.4 Contractor is hereby authorized to obtain a performance and payment bond from any Subcontractors selected by Contractor at its discretion and cost. Any bonds required by this subsection shall comply with the requirements set forth above.

36. HOLD HARMLESS AND INDEMNITY

Contractor shall defend, indemnify and hold harmless Superintendent, the Orange County Board of Education and its officer, agents and employees, Architect, Construction Manager, Inspector, the State of California and their officers, employees, agents and independent contractors from all liabilities, claims, actions, liens, judgments, demands, damages, losses, costs or expenses of any kind arising from death, personal injury, property damage or other cause based or asserted upon any act, omission, or breach connected with or arising from the progress of Work or performance of service under this Agreement or the Contract Documents. As part of this indemnity, Contractor shall protect and defend, at its own expense, Superintendent, the Orange County Board of Education and its officers, agents, and employees, Architect, Inspector, the State of California and their officers, employees, agents and independent contractors from any legal action including attorney's fees or other proceeding based upon such act, omission, breach or as otherwise required by this Article.

Furthermore, Contractor agrees to and does hereby defend, indemnify and hold harmless, Superintendent, the Orange County Board of Education and its officers, agents, and employees, Architect, Inspector, the State of California and their officers, employees, agents and independent contractors from every claim or demand made, and every liability, loss, damage, expense or attorney's fees of any nature whatsoever, which may be incurred by reason of:

- 36.1.1 Liability for (1) death or bodily injury to persons; (2) damage or injury to, loss (including theft), or loss of use of, any property; (3) any failure or alleged failure to comply with any provision of law or the Contract Documents; or (4) any other loss, damage or expense, sustained by any person, firm or corporation or in connection with the Work called for in this Agreement or the Contract Documents, except for liability resulting from the sole or active negligence, or the willful misconduct of the Superintendent.
- 36.1.2 Any bodily injury to or death of persons or damage to property caused by any act, omission or breach of Contractor or any person, firm or corporation employed by Contractor, either directly or by independent contract, including all damages or injury to, loss (including theft), or loss of use of, any property, sustained by any person, firm or corporation, including Superintendent, arising out of or in any way connected with Work covered by this Agreement or the Contract Documents, whether said injury or

damage occurs either on or off Superintendent property, but not for any loss, injury, death or damages caused by the sole or active negligence or willful misconduct of the Superintendent.

- 36.1.3 Any dispute between Contractor and Contractor's Subcontractors/supplies/sureties, including, but not limited to, any failure or alleged failure of the Contractor (or any person hired or employed directly or indirectly by the Contractor) to pay any Subcontractor or Materialman of any tier or any other person employed in connection with the Work and/or filing of any stop notice or mechanic's lien claims.

Contractor, at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings that may be brought or instituted against the Superintendent, the Orange County Board of Education and its officers, agents, and employees Architect or CM, or employees, on account of or founded upon any cause, damage, or injury identified herein and shall pay or satisfy any judgment that may be rendered against the Superintendent, its officers, agents or employees in any action, suit or other proceedings as a result thereof.

Contractor shall ensure that its contract with each of its Subcontractors contains provisions requiring the Subcontractors to defend, indemnify and hold harmless the Superintendent, the Orange County Board of Education, and its officers, agents, and employees, Architect, Inspector, the State of California to a minimum level as set forth in this Article and consistent with the language of this Article.

The Contractor's and Subcontractors' obligation to defend, indemnify and hold harmless the Superintendent, the Orange County Board of Education, and its officers, agents and employees,, Architect, Inspector, the State of California and their officers, employees, agents and independent contractors hereunder shall include, without limitation, any and all claims, damages, and costs for the following: (1) any damages or injury to or death of any person, and damage or injury to, loss (including theft), or loss of use of, any property; (2) breach of any warranty, express or implied; (3) failure of the Contractor or Subcontractors to comply with any applicable governmental law, rule, regulation, or other requirement; (4) products installed in or used in connection with the Work; and (5) any claims of violation of the Americans with Disabilities Act ("ADA") claims arising from failure to comply with the Construction Documents.

37. SUBSTITUTION OF SECURITY

In accordance with Public Contract Code section 22300, the Superintendent will permit the substitution of securities for any moneys withheld by the Superintendent to ensure performance under the Construction Services Agreement. At the request and expense of the Contractors, securities equivalent to the amount withheld shall be deposited with the Superintendent, or with a state or federally chartered bank as the escrow agent, who shall then pay such moneys to the Contractor. Upon satisfactory completion of the Construction Services Agreement the securities shall be returned to the Contractor.

38. TITLE TO WORK

Title to all work completed and in the course of construction paid for by Superintendent and title to all materials on account of which payment has been made by Superintendent to Contractor shall vest in Superintendent pursuant to the applicable provisions of the Sublease.

39. COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION

The Contractor shall be required to comply with all conditions of the State Water Resources Control Board (State Water Board) National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (Permit) for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. The Contractor shall be responsible for filing the Notice of Intent and for obtaining the Permit. The Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP) prior to initiating Work. The Contractor's Qualified SWPPP Developer (QSD) shall work with the Architect and its engineers in preparing an approved SWPPP and revising it as necessary or required. It shall be the Contractor's

responsibility to evaluate the cost of procuring the Permit and preparing the SWPPP as well as complying with the SWPPP and any necessary revision to the SWPPP. The Contractor shall employ a Qualified SWPPP Practitioner (QSP) to implement the approved SWPPP during construction. The Contractor shall comply with all requirements of the State Water Resources Control Board. The Contractor shall include all costs of compliance with specified requirements in the GMP.

Contractor shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by the Permit. Contractor shall provide copies of all reports and monitoring information to the Superintendent, Architect and the Superintendent's third party SWPPP consultant.

The Contractor shall comply with the lawful requirements of any applicable municipality, the Superintendent, drainage district, and other local agencies regarding discharges of storm water to separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

Failure to comply with the Permit is in violation of federal and state law. The Contractor hereby agrees to indemnify and hold harmless the Superintendent, the Orange County Board of Education and its officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the Superintendent, the Orange County Board of Education and its officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Permit arising out of or in connection with the Project, except for liability resulting from the sole negligence, willful misconduct or active negligence of the Superintendent, the Orange County Board of Education and its officers, agents, employees or authorized volunteers. County may seek damages from the Contractor for delay in completing the Project caused by the Contractor's failure to comply with the Permit.

40. EQUAL OPPORTUNITY CLAUSE

The Contractor herein agrees not to discriminate in its recruiting, hiring, promotion, demotion or termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age or physical handicap in the performance of this Construction Services Agreement and to comply with the provisions of the following laws:

- 40.1 California Fair Employment and Housing Act (Gov. Code 12900 *et seq.*, prohibiting discrimination in employment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex, and prohibiting harassment of an employee or applicant because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or age);
- 40.2 Federal Civil Rights Act of 1964 (42 USC '2000e *et seq.*, prohibiting discrimination in employment on the basis of race, color, national origin, religion, or sex); Title I of the Americans With Disabilities Act of 1990 (42 USC 12101 *et seq.*, prohibiting discrimination against qualified individuals with a disability in hiring and employment practices);
- 40.3 The Age Discrimination in Employment Act (29 USC 621 *et seq.*, prohibiting age discrimination in employment against individuals who are at least forty years of age);
- 40.4 California Labor Code section 1102.1 (prohibiting discrimination in any aspect of employment or opportunity for employment based on actual or perceived sexual orientation);
- 40.5 Sexual orientation;
- 40.6 American with Disabilities Act (ADA) (See Article 41); and
- 40.7 Any other laws or regulations prohibiting discrimination as may be applicable to Contractor.

41. SPECIAL NOTICE OF AMERICAN'S WITH DISABILITIES ACT

Some of the requirements in the Construction Documents are meant to comply with the American's with Disabilities Act ("ADA"). The requirements of the ADA are technical in nature and may appear to be minor in nature (i.e. whether a walkway or ramp has a 2% cross-slope). Contractor is warned that even the slightest deviation from the specific requirements from the ADA is considered a Civil Rights Violation and subjects the Superintendent to fines of three times actual damages sustained by a handicap individual or up to \$4,000 per violation and attorney's fees required to enforce the ADA violation. As a result of the significant liability and exposure associated with ADA aspects of the Contract, Contractor shall take special care to meet all ADA requirements detailed in the Construction Documents. Failure to comply with ADA rules that results in a Notice of Non-Compliance shall be repaired to meet ADA requirements promptly. In addition, any ADA violations that are not identified by Inspector or Architect that are later identified shall be repaired and charged back to the Contractor through a Deductive Change Order.

- 41.1 Indemnification of ADA Claims. ADA claims arising from failure to comply with Construction Documents shall be indemnified, held harmless and defended by Contractor. Further, any withholdings for ADA violations in Article 29.4 shall include potential redesign costs and an accelerated repair costs due to the potential for ADA claims arising from DSA posting of ADA violations on the Project.

42. PATENTS, ROYALTIES, AND INDEMNITIES

The Contractor shall hold and save the Superintendent and its officers, agents, and employees harmless from liability of any nature or kind, including cost and expense, for or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of this Construction Services Agreement, including its use by the Superintendent, except to the extent a method or means was specifically required by the Contract Documents.

43. EXCISE TAX

If under federal excise tax law any transaction hereunder constitutes a sale on which a federal excise tax is imposed and the sale is exempt from such excise tax because it is a sale to a state or local government for its exclusive use, the Superintendent, upon request, will execute a certificate of exemption which will certify (1) that the Superintendent is a political subdivision of the state for the purposes of such exemption and (2) that the sale is for the exclusive use of the Superintendent. No excise tax for such materials shall be included in the GMP.

44. PROHIBITED INTERESTS

No official of Superintendent and no Superintendent representative who is authorized in such capacity and on behalf of Superintendent to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with construction of Project, shall be or become directly or indirectly interested financially in this Construction Services Agreement or any part thereof. No officer, employee, architect, attorney, engineer or inspector of or for Superintendent who is authorized in such capacity and on behalf of Superintendent to exercise any executive, supervisory or other similar functions in connection with construction of Project, shall become directly or indirectly interested financially in this Construction Services Agreement or in any part thereof.

45. COMPLIANCE WITH DTSC GUIDELINES – IMPORTED SOIL/SOILS INSPECTION

- 45.1 If the Project requires the use of imported soils, the Contractor shall be responsible to use and shall certify that the imported material it uses is free of any hazardous and/or toxic substance or material of any nature or type as defined in accordance with California Law and the California Health and Safety Code. The Superintendent reserves the right to reject any imported material that has come from agricultural or commercial land uses. Contractor must notify the Superintendent of the source of material and comply with the applicable Regional Water Quality Control Board Resolution and when applicable, with the guidelines of the Department of Toxic Substances Control (DTSC).

- 45.2 Unless otherwise provided, when a soils investigation report obtained from test holes at the site is available, such report shall not be a part of this contract. Nevertheless, with respect to any such soils investigation and/or geotechnical report regarding the site, it shall be the responsibility of the Contractor to review and be familiar with such report. Any information obtained from such report or any information given on drawings as to subsurface soil condition or to elevations of existing grades or elevations of underlying rock is approximate only, is not guaranteed, and does not form a part of the contract, unless otherwise specifically provided. Contractor is required to make a visual examination of site and must make whatever tests it deems appropriate to determine the underground condition of the soil. Limited soil tests and subsurface investigations, if any, are available for review and consideration by Contractor and were conducted for the purpose of design only. Subsurface investigation information is made available by Superintendent solely as a matter of convenience and general information for Contractor and Contractor is expected to review and be familiar with such information. No representation is made by Superintendent or Architect that information provided is completely representative of all conditions and materials which may be encountered. If such a report is referenced in the Contract Documents for performance of the Project, such reference shall be to establish minimum requirements only. Further, no representation is made by Superintendent or Architect that information provided is solely adequate for purposes of construction. Superintendent disclaims responsibility for interpretations by Contractor of soil and subsurface investigation information, such as in protecting soil-bearing values, rock profiles, presence and scope of boulders and cobbles, soil stability and the presence, level and extent of underground water. Contractor shall determine means, methods, techniques and sequences necessary to achieve required characteristics of completed Work. Conditions found after execution of the Construction Services Agreement to be materially different from those reported and which are not customarily encountered in the geographic area of the Project shall be governed by provisions of this Construction Services Agreement for unforeseen conditions.

46. HAZARDOUS WASTE AND UNKNOWN PHYSICAL CONDITIONS

Contractor shall promptly, and before the following conditions are disturbed, notify the Superintendent, in writing, of any:

1. Material that Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
2. Subsurface or latent physical conditions at the Site differing from those indicated, including geological, soils, and or water table issues which impede construction or increase Construction Costs.
3. Unknown physical conditions at the Site (not including structures or improvements) of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Construction Services Agreement.

46.1 Superintendent shall promptly investigate the conditions, and if it finds that the conditions materially so differ, and the materials that are not on reports or documents supplied or reviewed as part of Contractor's Due Diligence shall be submitted as a Change Order under Article 17 and, upon approval, shall be allocated to the Unforeseen Allowance.

46.2 In the event that a dispute arises between Superintendent and Contractor whether the conditions materially differ from Due Diligence Documents reviewed for hazardous substances, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided for by this Construction Services Agreement but shall proceed with all work to be performed under the Construction Services Agreement.

47. NO ASBESTOS CERTIFICATION

47.1 Asbestos Free Installation Certification: Contractor shall execute and submit an “Asbestos Free Materials Certification,” and further, is aware of the following

47.1.1 Should asbestos containing materials be installed by the Contractor in violation of this certification, or if removal of asbestos containing materials is part of the Project, decontaminations and removals will be performed in accordance with the requirements of all applicable laws and will meet the following criteria:

47.1.1.1 Decontamination and removal of work found to contain asbestos or work installed with asbestos containing equipment shall be done only under the supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency (EPA).

47.1.1.2 The asbestos removal contractor shall be an EPA accredited contractor qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant who shall have sole discretion and final determination in this matter.

47.1.1.3 The asbestos consultant shall be chosen and approved by the Superintendent which shall have sole discretion and final determination in this matter.

47.1.1.4 The work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.

47.1.2 If removal of asbestos containing materials is part of the Project, the cost of all asbestos removal, including, but not necessarily limited to the cost of the asbestos removal contractor, the cost of the asbestos consultant, analytical and laboratory fees, time delays and additional costs that may be incurred by the Superintendent shall be borne entirely by the Contractor.

47.1.3 Hold Harmless: Interface of work for the Project with work containing asbestos shall be executed by the Contractor at his/her risk and at his/her discretion with full knowledge of the currently accepted standards, hazards, risks and liabilities associated with asbestos work and asbestos containing products. By execution of the Construction Services Agreement the Contractor acknowledges the above and agrees to the fullest extent permitted by law to hold harmless the Superintendent, its Board and each member of the Board, its officers, employees, agents, representatives, including its Architect and assigns, for all asbestos liability which may be associated with this work. The Contractor further agrees to instruct his/her employees with respect to the above mentioned standards, hazards, risk and liabilities.

48. LAWS AND REGULATIONS

Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on conduct of work as indicated and specified. If Contractor observes that drawings and specifications are at variance therewith, it shall promptly notify Architect in writing and any necessary changes shall be adjusted as provided in this Construction Services Agreement for changes in work. If Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Superintendent's Architect, it shall bear all costs arising therefrom.

49. AGREEMENT MODIFICATIONS

No waiver, alteration or modification of any of the provisions of this Construction Services Agreement shall be binding upon either Superintendent or Contractor unless the same shall be in writing and signed by both Superintendent and Contractor.

50. NOTICES

All communications in writing between Superintendent and Contractor, including without limitation, applications for payment, shall be deemed to have been received by the addressee if delivered to the person for whom they are intended or if sent by registered mail, return receipt requested, or e-mail to the e-mail address provided and copied to the Project Superintendent, followed by regular mail, addressed pursuant to the Notice Section of Article 3.

51. THIRD-PARTY CLAIMS

Pursuant to Public Contract Code section 9201(b) and (c), Superintendent shall provide Contractor with timely notification of the receipt of any third-party claim, relating to the Contract. Superintendent is entitled to recover its reasonable costs incurred in providing such notification.

52. ASSIGNMENT

Except Contractor's responsibility to assign Subcontractors and material suppliers to Superintendent upon Project Completion and the running of the Warranty Period, Contractor shall not assign or sublet the Lease, Sublease or this Construction Services Agreement, nor shall Contractor assign any monies due or to become due to it hereunder. Contractor has unique abilities and understanding of the Project from negotiations and the Due Diligence that has been undertaken and, thus, any assignment will not transfer to the assignee the specific understanding associated with Contractor on this Project.

53. HEADINGS

The headings herein contained are inserted only as a matter of convenience and reference and are not meant to define, limit or describe the scope or intent of the Contract Documents or in any way to affect the terms and provisions set forth herein.

54. INTEGRATION/MODIFICATION

This Construction Services Agreement represents the entire understanding of Superintendent and Contractor as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered herein, and it shall not be amended, altered or changed except by a written agreement signed by the parties hereto.

55. APPLICABLE LAW/ PROVISIONS REQUIRED BY LAW DEEMED INSERTED

The terms and provisions of this Construction Services Agreement shall be construed in accordance with the laws of the State of California. If any action is brought in a court of law to enforce any term of this Construction Services Agreement the action shall be brought in a state court situated in the county where the Superintendent is located, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this county. In the event of any such litigation between the parties, the parties shall pay for their respective costs incurred, including attorneys' fees.

Each and every provision of law and clause required by law to be inserted in this Construction Services Agreement shall be deemed to be inserted herein and the Construction Services Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party, the Construction Services Agreement shall forthwith be physically amended to make such insertion or correction.

56. SUCCESSION OF RIGHTS AND OBLIGATIONS

All rights and obligations under this Construction Services Agreement shall inure to and be binding upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have, by their duly authorized representatives, executed this Construction Services Agreement, in duplicate, as of the day and year first above written.

CONTRACTOR:

SUPERINTENDENT:

**ORANGE COUNTY SUPERINTENDENT OF
SCHOOLS**

By: _____
Name
Title

By: _____
Name
Title

DATE: _____

DATE: _____

EXHIBIT “A”

SCOPE OF WORK / CONSTRUCTION DOCUMENTS

[TO BE INSERTED]

EXHIBIT “B”
MASTER BUDGET
[TO BE INSERTED]

EXHIBIT “C”
DVBE REQUIREMENTS

EXHIBIT "D"
PAYMENT BOND
(CALIFORNIA PUBLIC WORK)

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the ORANGE COUNTY SUPERINTENDENT OF SCHOOLS (sometimes referred to hereinafter as "Obligee") has awarded to _____ (hereinafter designated as the "Principal" or "Contractor"), an agreement for the work described as follows: Rancho Sonado Project (hereinafter referred to as the "Public Work"); and

WHEREAS, said Contractor is required to furnish a bond in connection with said Contract, and pursuant to California Civil Code section 9550;

NOW, THEREFORE, We, _____, the undersigned Contractor, as Principal; and _____, a corporation organized and existing under the laws of the State of _____, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the Orange County Superintendent of Schools and to any and all persons, companies, or corporations entitled by law to file stop notices under California Civil Code section 9100, or any person, company, or corporation entitled to make a claim on this bond, in the sum of _____ Dollars (\$ _____), such sum being not less than one hundred percent (100%) of the total amount payable by said Obligee under the terms of said Contract, for which payment will and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, its heirs, executors, administrators, successors, or assigns, or subcontractor, shall fail to pay any person or persons named in Civil Code section 9100; or fail to pay for any materials, provisions, or other supplies, used in, upon, for, or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code, with respect to work or labor thereon of any kind; or shall fail to deduct, withhold, and pay over to the Employment Development Department, any amounts required to be deducted, withheld, and paid over by Unemployment Insurance Code section 13020 with respect to work and labor thereon of any kind, then said Surety will pay for the same, in an amount not exceeding the amount herein above set forth, and in the event suit is brought upon this bond, also will pay such reasonable attorneys' fees as shall be fixed by the court, awarded and taxed as provided in California Civil Code section 9550 *et seq.*

This bond shall inure to the benefit of any person named in Civil Code section 9100 giving such person or his/her assigns a right of action in any suit brought upon this bond.

It is further stipulated and agreed that the Surety of this bond shall not be exonerated or released from the obligation of the bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, or specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefor; nor by any change or modification of any terms of payment or extension of time for payment pertaining or relating to any scheme or work of improvement herein above described; nor by any rescission or attempted rescission of the contract, agreement or bond; nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond; nor by any fraud practiced by any person other than the claimant seeking to recover on the bond; and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given; and under no circumstances shall the Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the Obligee and the Contractor or on the part of any obligee named in such bond; that the sole condition of recovery shall be that the claimant is a person described in California Civil Code section 9100, and who has not been paid the full amount of his or her claim; and that the Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

IN WITNESS WHEREOF this instrument has been duly executed by the Principal and Surety above named,
on the _____ day of _____, 20____.

PRINCIPAL/CONTRACTOR:

By: _____

SURETY:

By: _____

Attorney-in-Fact

IMPORTANT: THIS IS A REQUIRED FORM.

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code section 105, and if the work or project is financed, in whole or in part, with federal, grant or loan funds, Surety's name must also appear on the Treasury Department's most current list (Circular 570 as amended).

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of agent or representative for service
for service of process in California)

Telephone: _____

Telephone: _____

A notary public or other office completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____, before me, _____, personally
appeared _____, who proved on the basis of satisfactory evidence to be the
person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed
the same in his/her/their authorized capacity(ies) as the Attorney-in-Fact of _____
(Surety) and acknowledged to me that by his/her/their signature(s) on the instrument the person(s), or the entity upon
behalf of which the person(s) executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true
and correct.

WITNESS my hand and official seal.

Notary Public in and for said State

(SEAL)

Commission expires: _____

NOTE: A copy of the power-of-attorney to local representatives of the bonding company must be attached hereto.

EXHIBIT "E"
CONTRACT PERFORMANCE BOND
(CALIFORNIA PUBLIC WORK)

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the ORANGE COUNTY SUPERINTENDENT OF SCHOOLS (sometimes referred to hereinafter as "Obligee") has awarded to _____ (hereinafter designated as the "Principal" or "Contractor"), an agreement for the work described as follows: Rancho Sonado Project (hereinafter referred to as the "Public Work"); and

WHEREAS, the work to be performed by the Contractor is more particularly set forth in that certain contract for said Public Work dated _____, (hereinafter referred to as the "Contract"), which Contract is incorporated herein by this reference; and

WHEREAS, the Contractor is required by said Contract to perform the terms thereof and to provide a bond both for the performance and guaranty thereof.

NOW, THEREFORE, we, _____, the undersigned Contractor, as Principal, and _____, a corporation organized and existing under the laws of the State of _____, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the Orange County Superintendent of Schools in the sum of _____ Dollars (\$ _____), said sum being not less than one hundred percent (100%) of the total amount payable by said Obligee under the terms of said Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the bounded Contractor, his or her heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in said Contract and any alteration thereof made as therein provided, on his or her part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill guarantees of all materials and workmanship; and indemnify, defend and save harmless the Obligee, its officers and agents, as stipulated in said Contract, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that it shall not be exonerated or released from the obligation of this bond (either by total exoneration or pro tanto) by any change, extension of time, alteration in or addition to the terms of the contract or to the work to be performed there under or the specifications accompanying the same, nor by any change or modification to any terms of payment or extension of time for any payment pertaining or relating to any scheme of work of improvement under the contract. Surety also stipulates and agrees that it shall not be exonerated or released from the obligation of this bond (either by total exoneration or pro tanto) by any overpayment or underpayment by the Obligee that is based upon estimates approved by the Architect. The Surety stipulates and agrees that none of the aforementioned changes, modifications, alterations, additions, extension of time or actions shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, modifications, alterations, additions or extension of time to the terms of the contract, or to the work, or the specifications as well notice of any other actions that result in the foregoing.

Whenever Principal shall be, and is declared by the Obligee to be, in default under the Contract, the Surety shall promptly either remedy the default, or shall promptly take over and complete the Contract through its agents or independent contractors, subject to acceptance and approval of such agents or independent contractors by Obligee as hereinafter set forth, in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages; or, at Obligee's sole discretion and election, Surety shall obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Obligee of the lowest

responsible bidder, arrange for a contract between such bidder and the Oblige and make available as Work progresses (even though there should be a default or succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the "balance of the Contract price" (as hereinafter defined), and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages. The term "balance of the Contract price," as used in this paragraph, shall mean the total amount payable to Principal by the Oblige under the Contract and any modifications thereto, less the amount previously paid by the Oblige to the Principal, less any withholdings by the Oblige allowed under the Contract. Oblige shall not be required or obligated to accept a tender of a completion contractor from the Surety.

Surety expressly agrees that the Oblige may reject any agent or contractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Principal. Unless otherwise agreed by Oblige, in its sole discretion, Surety shall not utilize Principal in completing the Contract nor shall Surety accept a bid from Principal for completion of the work in the event of default by the Principal.

No final settlement between the Oblige and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

The Surety shall remain responsible and liable for all patent and latent defects that arise out of or relate to the Contractor's failure and/or inability to properly complete the Public Work as required by the Contract and the Contract Documents. The obligation of the Surety hereunder shall continue so long as any obligation of the Contractor remains.

Contractor and Surety agree that if the Oblige is required to engage the services of an attorney in connection with enforcement of the bond, Contractor and Surety shall pay Oblige's reasonable attorneys' fees incurred, with or without suit, in addition to the above sum.

In the event suit is brought upon this bond by the Oblige and judgment is recovered, the Surety shall pay all costs incurred by the Oblige in such suit, including reasonable attorneys' fees to be fixed by the Court.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this ____ day of _____,
20____.

PRINCIPAL/CONTRACTOR:

By: _____

SURETY:

By: _____

Attorney-in-Fact

The rate of premium on this bond is _____ per thousand.

The total amount of premium charged: \$ _____ (This must be filled in by a corporate surety).

IMPORTANT: THIS IS A REQUIRED FORM.

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code section 105, and if the work or project is financed, in whole or in part, with federal, grant or loan funds, Surety's name must also appear on the Treasury Department's most current list (Circular 570 as amended).

Any claims under this bond may be addressed to:
(Name and Address of Surety)

(Name and Address of agent or representative for service
for service of process in California)

Telephone: _____

Telephone: _____

A notary public or other office completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

[illegible]

On _____, before me, _____, personally appeared _____, who proved on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) as the Attorney-in-Fact of _____ (Surety) and acknowledged to me that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public in and for said State

(SEAL)

Commission expires:_____

NOTE: A copy of the power-of-attorney to local representatives of the bonding company must be attached hereto.

EXHIBIT "F"

CONTRACTOR FINGERPRINTING REQUIREMENTS

CONTRACTOR CERTIFICATION

With respect to the Contract dated _____ 20__, by and between the Orange County Superintendent of Schools ("Superintendent") and _____ ("Contractor") Contractor hereby certifies to the Superintendent's governing board that it has completed the criminal background check requirements of Education Code section 45125.1 and that none of its employees that may come in contact with any students have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

Contractor's Representative _____

Date: _____

CONTRACTOR EXEMPTION

Pursuant to Education Code sections 45125.1 and 45125.2, the Orange County Superintendent of Schools ("Superintendent") as determined that _____ ("Contractor") is exempt from the criminal background check certification requirements for the contract dated _____ 20__, by and between the Superintendent and Contractor ("Contract") because:

- ☐ The Contractor's employees will have limited contact with students during the course of the Contract;
- ☐ Emergency or exceptional circumstances exist; or
- ☐ With respect to Contractors constructing, reconstructing, rehabilitating or repairing a school facility, as provided in Section 45125.2, the Contractor has agreed to ensure the safety of students at the facility by the following method(s) specified in Section 45125.2:
 - ☐ The installation of a physical barrier at the worksite to limit contact with students.
 - ☐ Continual supervision and monitoring of all employees of the entity by an employee of the entity whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.

Superintendent Official: _____

Date: _____

EXHIBIT "F" (CONT.)

SUBCONTRACTOR FINGERPRINTING REQUIREMENTS

SUBCONTRACTOR'S CERTIFICATION

The Orange County Superintendent of Schools ("Superintendent") entered into a contract for services with _____ ("Contractor") on or about _____, 20____, ("Contract"). This certification is submitted by _____, a subcontractor to the Contractor for purposes of that Contract ("Subcontractor"). Subcontractor hereby certifies to the Superintendent's governing board that it has completed the criminal background check requirements of Education Code section 45125.1 and that none of its employees that may come in contact with students have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

Subcontractor's Representative: _____

Date: _____

SUBCONTRACTOR'S EXEMPTION

The Orange County Superintendent of Schools ("Superintendent") entered into a contract for services with _____ ("Contractor") on or about _____, 20____ ("Contract". Pursuant to Education Code sections 45125.1 and 45125.2, the Superintendent has determined that _____, a subcontractor to the Contractor for purposes of that Contract ("Subcontractor") is exempt from the criminal background check certification requirements for the Contract because:

- ☐ The Subcontractor's employees will have limited contact with students during the course of the Contract;
- ☐ Emergency or exceptional circumstances exist; or
- ☐ With respect to Contractors constructing, reconstructing, rehabilitating or repairing a school facility, as provided in Section 45125.2, the Contractor has agreed to ensure the safety of students at the facility by the following method(s) specified in Section 45125.2:
 - ☐ The installation of a physical barrier at the worksite to limit contact with students.
 - ☐ Continual supervision and monitoring of all employees of the entity by an employee of the entity whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.

Superintendent Official: _____

Date: _____

EXHIBIT "G"

CONTRACTOR'S CERTIFICATE REGARDING WORKERS' COMPENSATION

Labor Code section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

(a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this State.

(b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, either as an individual employee or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Construction Services Agreement.

Contractor _____

Title _____

Date _____

(In accordance with article 5 (commencing at section 1860), chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under this Construction Services Agreement.)

EXHIBIT "H"

DRUG-FREE WORKPLACE CERTIFICATION

This Drug-Free Workplace Certification form is required from all successful bidders pursuant to the requirements mandated by Government Code section 8350 *et seq.*, the Drug-Free Workplace Act of 1990. The Drug-Free Workplace Act of 1990 requires that every person or organization awarded a contract or grant for the procurement of any property or service from any State agency must certify that it will provide a drug-free workplace by performing certain specified acts. In addition, the Act provides that each contract or grant awarded by a State agency may be subject to suspension of payments or termination of the contract or grant, and the Contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred.

Pursuant to Government Code section 8355, every person or organization awarded a contract or grant from a State agency shall certify that it will provide a drug-free workplace by doing all of the following:

1. Publishing a statement, notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace, and specifying actions which will be taken against employees for violations of the prohibition.
2. Establishing a drug-free awareness program to inform employees about all of the following:
 - a. The dangers of drug abuse in the workplace;
 - b. The person's or organization's policy of maintaining a drug-free workplace;
 - c. The availability of drug counseling, rehabilitation and employee-assistance programs; and
 - d. The penalties that may be imposed upon employees for drug abuse violations;
3. Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I, the undersigned, agree to fulfill the terms and requirements of Government Code section 8355 listed above and will (a) publish a statement notifying employees concerning the prohibition of controlled substance at the workplace, (b) establish a drug-free awareness program, and (c) require each employee engaged in the performance of the contract be given a copy of the statement required by section 8355(a) and require such employee agree to abide by the terms of that statement.

I also understand that if the Superintendent determines that I have either (a) made a false certification herein, or (b) violated this certification by failing to carry out the requirements of Section 8355, that the contract awarded herein is subject to termination, suspension of payments, or both. I further understand that, should I violate the terms of the Drug-Free Workplace Act of 1990, I may be subject to debarment in accordance with the requirements of Section 8350 *et seq.*

I acknowledge that I am aware of the provisions of Government Code section 8350 *et seq.* and hereby certify that I will adhere to the requirements of the Drug-Free Workplace Act of 1990.

DATE: _____

CONTRACTOR

By: _____
Signature

EXHIBIT "I"

CONDUCT RULES FOR CONTRACTORS

Each contractor/subcontractor, when performing work on Orange County Superintendent of Schools property, in addition to complying with the provisions of the Construction Services Agreement, shall adhere to the following rules of conduct:

1. Professional and courteous conduct is expected and will be displayed at all times.
2. Interaction with students, staff, and/or other visitors is prohibited with the exception of designated administrators.
3. The use of profanity and/or disparaging language will not be tolerated.
4. All contractors/subcontractors shall wear a means of identification on site when school is in session which must be approved by the Superintendent prior to commencement of work.
5. All contractors/subcontractors shall remain in the vicinity of his/her work and will not stray to other areas of the property not involved in the Project, including student and staff toilet facilities.
6. Pursuant to Government Code section 8350 *et seq.*, the Orange County Superintendent of Schools is a drug-free workplace. This policy shall be strictly enforced.
7. Alcoholic beverages are prohibited from being consumed or brought on any Superintendent property.
8. The use of any tobacco products on Superintendent property is strictly prohibited.
9. Any lewd, obscene or otherwise indecent acts, words, or behavior by any contractor/subcontractor shall not be tolerated.
10. All contractors/subcontractors shall conform to a dress code whereby:
 - A. No clothing that contains violent, suggestive, derogatory, obscene, or racially-biased material may be worn.
 - B. Garments, accessories or personal grooming artifacts with slogans, graphics, or pictures promoting drugs, alcohol, tobacco, or any other controlled substances which are prohibited to minors will not be allowed.
11. No firearms are allowed on campuses/Superintendent property.
12. All contractors/subcontractors shall comply with Education Code section 45125 *et seq.* with respect to all fingerprinting requirements.

Non-compliance with any of the above-stated rules of conduct by any contractor/subcontractor may be sufficient grounds for immediate removal from the job site and termination of the contract.

I acknowledge that I am aware of the above-stated rules of conduct and hereby certify that all of my Company's employees, consultants, suppliers, and/or any subcontractors will adhere to these provisions.

Date

Authorized Signature

Print Name

Company

CALIFORNIA AIR RESOURCES BOARD (CARB) COMPLIANCE CERTIFICATION

In accordance with California Air Resources Board's In-Use Off-Road Diesel-Fueled Fleets Regulation, the Superintendent is required to obtain copies of valid Certificates of Reported Compliance from the Contractor and all listed Subcontractors who own off-road diesel fleet vehicles in California and will use such vehicles on this Project before entering into a contract for this Project. This requirement covers all applicable vehicles and equipment as set forth Title 13, California Code of Regulations, Section 2449 and applies to the Contractor and all listed Subcontractors. Contractor hereby certifies the following:

1. Contractor and all Subcontractors agree to fully comply with all requirements set forth in Title 13, California Code of Regulations, Section 2449 (all references to this regulation herein shall include and incorporate any future amendments or updates.)
2. Contractor agrees to fully indemnify and defend the Superintendent from any claims, costs, damages, or any liability related to or arising from the failure of the Contractor or its Subcontractors to comply with all requirements set forth in Title 13, California Code of Regulations, Section 2449.
3. Within five (5) calendar days after the notice of award of Contract, Contractor shall provide copies of the valid Certificates of Reported Compliance for the Contractor and all listed Subcontractors.
4. Contractor agrees it will provide any additional information and documents reasonably requested by the Superintendent to confirm compliance with Title 13, California Code of Regulations, Section 2449 and any other requirements imposed by the California Air Resources Board.
5. Any exemptions to compliance with Title 13, California Code of Regulations, Section 2449 claimed by Contractor or any listed Subcontractor must be accompanied by a detailed explanation with specific citations to the applicable regulations governing such exemption and all supporting documentation within five (5) calendar days after the notice of award of award of Contract.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Division 1 Forms

IMMEDIATE CHANGE DIRECTIVE NO.

PROJECT: Rancho Sonado Project

TO: _____

You are hereby directed to provide the extra work necessary to comply with this ICD.

DESCRIPTION OF CHANGE: _____

COST (This cost shall not be exceeded): _____

TIME FOR COMPLETION: _____

NOTE:

Pursuant to Article 17.4.1.2 An Immediate Change Directive is a written order to the Contractor prepared by the Architect and signed by the Superintendent (and CM if there is a CM on the Project) and the Architect, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Superintendent may by ICD, without invalidating the Contract, direct immediate changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions within. If applicable, the Contract Sum and Contract Time will be adjusted accordingly. CONTRACTOR SHALL PROCEED WITH WORK SET FORTH IN THIS ICD IMMEDIATELY UPON RECEIPT OR THE SUPERINTENDENT MAY EITHER HOLD THE CONTRACTOR IN EITHER PARTIAL DEFAULT PURSUANT TO ARTICLE 12.2 OR TOTAL DEFAULT PURSUANT TO ARTICLE 19.

Architect

Superintendent

CERTIFICATE OF SUBSTANTIAL COMPLETION

PROJECT: Rancho Sonado Project

TO: _____

As the Architect for the Project described above, the Project has reached Substantial Completion. Substantial Completion is not reached unless and until each of the following five (5) conditions have been fully met: (1) all contractually required items have been installed with the exception of only minor and incomplete Punch List items; (2) All fire/life safety systems have been installed, and are working and signed off on the DSA Form 152 Inspection Card; (3) all building systems including mechanical, electrical and plumbing are all functioning; (4) all other items DSA Form 152 Inspection Card for the Project have been approved and signed off; and (5) the Project is fit for occupancy and its intended use.

I certify that the Project has reached Substantial Completion as defined above on the following date: _____.

Architect